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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2009 MAR -2 P 2: 2b

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC, 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

SWING FIRST'S NOTICE OF FILING REVISED DIRECT TESTIMONY

1 Swing First Golf LLC ("Swing First") hereby files the Revised Direct Testimony of
2 David Ashton and the Revised Direct Testimony of Sonn S. Rowell.

3 Swing First hereby withdraws the Direct Testimony of David Ashton, dated February 3,
4 2009, the Supplemental Direct Testimony of David Ashton, dated February 17, 2009, and the
5 Direct Testimony of Sonn S. Rowell, dated February 25, 2009.

6 RESPECTFULLY SUBMITTED on March 2, 2009.

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Arizona Corporation Commission

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2 on March 2, 2009, with

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4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

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9 **Copy of the foregoing mailed and e-mailed**
10 on March 2, 2009, to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCKET NO. WS-02987A-08-0180

**REVISED DIRECT TESTIMONY
OF
DAVID ASHTON
ON BEHALF OF
SWING FIRST GOLF LLC
MARCH 2, 2009**

**REVISED DIRECT TESTIMONY
OF
DAVID ASHTON
ON BEHALF OF
SWING FIRST GOLF LLC
MARCH 2, 2009**

TABLE OF CONTENTS

I	INTRODUCTION AND QUALIFICATIONS	1
II	GEORGE JOHNSON HAS CHEATED AND ABUSED SWING FIRST GOLF.....	2
III	UTILITY HAS ENGAGED IN ILLEGAL AFFILIATE TRANSACTIONS.....	15

EXECUTIVE SUMMARY

David Ashton testifies as follows:

Mr. Ashton is the managing member of Swing First Golf, LLC, ("Swing First") a customer of Johnson Utilities LLC ("Utility"), including treated effluent for irrigation of Swing First's Johnson Ranch Golf Course.

Utility has refused to deliver effluent on many occasions, even when it was available.

Utility has routinely overcharged for the water it delivered.

Utility has routinely failed to read Swing First's meters, at one point for six consecutive months in 2007.

At the direction of George Johnson, Utility charged Swing First the potable water rate for irrigation water delivered.

Utility initially provided Swing First a water credit for management services Swing First provided to a Utility affiliate, but then reversed the credit.

Utility created a phony past due balance as a pretence to cut off irrigation water service.

Utility failed to follow the Commission's rules before cutting off irrigation water service.

Utility sued Swing First in court to attempt to collect the phony past-due balance.

Utility sued Mr. Ashton and his wife for defamation for discussion Utility's billing and tariff issues with other irrigation customers.

Utility deliberately over-delivered effluent and flooded the Johnson Ranch Golf Course.

Utility has deliberately withheld effluent during times of high irrigation demands.

George Johnson and Utility sent a letter to Swing First's members, which was clearly intended to intimidate them from supporting Swing First's participation in this case and in Docket No. WS-02987A-08-0049 (Swing First's complaint case against Utility).

Utility's letter also attacked Mr. Ashton personally, and attempted to destroy his business relationship with the other Swing First Members.

Utility has engaged in illegal affiliate transactions.

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 LLC
2 (“Utility”).

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

4 A. The purpose of my testimony is to bring to the Commission’s attention certain activities
5 and practices by George Johnson and his Utility that the Commission should consider as
6 part of this rate case.

7 **II GEORGE JOHNSON HAS CHEATED AND ABUSED SWING FIRST GOLF**

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

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

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

13 A. It hasn’t been positive. Before I bought the golf course I was warned by several people
14 that Mr. Johnson was difficult to do business with because he was very powerful, and
15 unfortunately not very honest. Not knowing him, I assumed these people had been
16 colored by a couple of bad experiences and didn’t give it much thought. Unfortunately,
17 in the last four and a half years I have learned that I should have heeded these warnings.
18 Mr. Johnson has used his Utility to try to both overcharge Swing First and to cheat us out
19 of money he owes us. His Utility has failed to provide the effluent to irrigate our golf
20 course. Meter-reading has been erratic and billing has been a mess. Utility attempted to
21 illegally cut off my service. Utility has also experienced mysterious pipe failures that
22 allegedly prevented it from delivering irrigation water when it knew the water was
23 especially needed. During a rainy week in early 2008, Utility over-delivered effluent to
24 the course, causing our lake to overflow and damaging the golf course. Finally, Mr.
25 Johnson recently sent out a letter from Utility, which tried to intimidate Swing First

1 members from supporting Swing First's participation in this case, attacked me personally,
2 and attempted to destroy my business relationship with the other Swing First Members.

3 **Q. HOW LONG HAVE YOU BEEN A UTILITY CUSTOMER?**

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

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

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

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

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

13 **Q. DOES SWING FIRST HAVE A CONTRACT TO RECEIVE EFFLUENT FROM
14 UTILITY?**

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

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

23 A. Certainly. The status of the 1999 contract is not clear. However, the Johnson Ranch
24 Golf Course has been Utility's customer for many years. We should be receiving as

1 much effluent as Utility can deliver, up to our requirements. This is in accordance with
2 our rights as a tariffed effluent customer, and is wise public policy.

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

4 A. No. Utility only rarely delivered effluent from the time the service was turned on, until
5 the date I filed a formal complaint with the Commission. Instead, it has delivered CAP-
6 water to Swing First and charged Swing First \$0.83 per thousand gallons, up to \$3.75 per
7 thousand gallons. Further, on those occasions when Utility did deliver effluent before the
8 formal complaint was filed, Utility almost always billed Swing First at the CAP-water
9 rate of \$0.83 per thousand gallons.

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

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

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

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

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

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

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

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

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

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

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

1 don't bill according to the law, but according to what Mr. Johnson tells them to bill. In
2 2007, when I asked the Utility why it was billing me \$3.75 per thousand gallons for CAP
3 water, the response was "Because George told us to change the rate in our computers, and
4 when George tells you to do something you do it."

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

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

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

15 The bill supplied by Utility in response to our data request was obviously created long
16 after the original bill was sent to me, and it's very difficult to discern (from the various
17 sets of bills) what is real, what isn't, and how the charges and credits came about. This
18 naturally works to Utility's advantage.

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

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

22 **Q. WHAT DEGREE OF CONFIDENCE DO YOU HAVE IN THE BILL "COPIES"**
23 **THAT UTILITY HAS PROVIDED TO SWING FIRST?**

1 A. I have no confidence in the bills we received prior to my filing of the formal complaint.
2 Now that Mr. Johnson is aware that his actions will be reported to the Commission, I
3 have some confidence in his current bills. However, when the Commission is no longer
4 looking, I will again have little to no confidence. Utility has only sporadically read our
5 meters and has been recreating our bills after the fact.

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

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

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

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

16 A. Swing First does not owe Utility anything. More than a year ago I calculated that if
17 Utility had satisfied our irrigation needs with treated effluent, as our contract and public
18 policy require, and not reneged on the billing credit, Swing First would have
19 cumulatively overpaid Utility more than \$70,000. Of course, this calculation is based on
20 Utility's meter reads, which are infrequent and hardly inspire confidence. I also lack bills
21 from 2004, 2005 and 2006, so I really can't calculate exactly how much they owe me,
22 and that is to their advantage. Utility and I both recognize that. But they owe me at least
23 \$70,000.

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

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

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

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

13 On May 1, 2006, Swing First began managing the Oasis. In turn, Utility provided the
14 agreed-upon water credit. Swing First discontinued the Oasis management relationship
15 on Nov 16, 2006, retroactive to October 31, 2006.

16 **Q. WHAT IS THE VALUE OF THE BILL CREDIT THAT MR. JOHNSON**
17 **REVERSED?**

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

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

1 I wasn't in his office when he was making decisions, but the following events transpired
2 – in obvious retaliation. First, Utility reversed Swing First's water credit, which was
3 valued at approximately \$50,000. Second, directly at Mr. Johnson's request, Swing
4 First's price for irrigation water was manipulated in Utility's computers to be
5 \$3.75/thousand gallons, instead of the \$0.62 effluent water rate or the \$0.83 CAP water
6 rate. Third, Mr. Johnson turned off the effluent tap. For seven months in 2007, Utility
7 delivered no effluent whatsoever, and very little in the remaining five months of the years

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

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

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

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

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

21 A. To get Utility to comply with the Commission's rules, Swing First filed an informal
22 complaint, followed by a formal complaint with the Commission (Docket No. WS-
23 02987A-08-0049).

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

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

7 **Q. DID GEORGE JOHNSON DO ANYTHING TO YOU PERSONALLY?**

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

14 If I had the money, I could have just paid the money that he claimed I owed him and
15 likely resolved the lawsuit, but how could I accede to such blatant intimidation tactics? I
16 just wanted to buy water for the golf course in accordance with my contracts and the law,
17 and at the tariffed price. It should not be difficult for Utility to just sell us effluent at the
18 tariffed price, read our meters, and bill us accurately.

19 **Q. WAS THERE ANYTHING ELSE ABOUT THE AMENDMENTS THAT WAS**
20 **ESPECIALLY HURTFUL?**

21 A. Yes. Utility added my wife as a defendant. This has caused her extensive anguish. I
22 really didn't appreciate this. You can pick on a man, but when you pick on his wife, that
23 is really low.

24 **Q. HOW ELSE DID GEORGE JOHNSON AND UTILITY RETALIATE?**

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

5 The week beginning on Sunday January 27 was extremely rainy. As a result, Swing First
6 needed no irrigation water. However, beginning on February 1, 2008, Utility began
7 delivering significant amounts of effluent to Swing First, despite our requests that they
8 not do so. This caused the lake bordering the 18th hole to overflow, which damaged the
9 golf course. My employees asked the Utility several times to stop delivery, but they
10 ignored the requests. My employees then escalated the issue to me and I asked the Utility
11 several times in writing to stop the deliveries. Unfortunately, Mr. Tompsett was no more
12 cooperative. Then, after flooding the course, Utility actually billed us for the water we
13 never wanted.

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

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

23 I met with Brian Tompsett on an unrelated matter (an Oasis liquor-license issue, which he
24 was responsible for) and asked if he would please store effluent for us for later delivery.
25 He said he could do that and we later exchanged emails about it. However, when we

1 asked to draw on the stored effluent, Mr. Tompsett said that they had no stored effluent
2 for us. He then tried to force us into signing a CAP delivery contract.

3 **Q. WHAT HAPPENED AFTER UTILITY REFUSED TO DELIVER STORED**
4 **EFFLUENT?**

5 A. Utility backed down on its demand that I sign a CAP-delivery contract and began
6 delivering effluent directly from the plant. But then Utility claimed that it had a broken
7 line and could not deliver any effluent for about a day. There have been other times
8 when they've claimed their line has broken, like during last summer, which is of course
9 the other time of year when we most need water. Utility certainly knows when we most
10 need water.

11 **Q. WAS SWING FIRST ABLE TO SUCCESSFULLY OVER-SEED IN OCTOBER**
12 **2008?**

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

15 **Q. HAVE THERE BEEN ANY INCIDENTS WITH UTILITY IN 2009?**

16 A. Yes. The most recent incident is perhaps the worst, and should cause the Commission
17 great concern.

18 **Q. IN 2009, WHAT DID UTILITY AND MR. JOHNSON DO?**

19 A. Exhibit DA-1 is a copy of a February 9, 2009, letter from Utility, signed by George
20 Johnson. The letter was sent to multiple members of Swing First Golf. The letter is
21 clearly intended to intimidate Swing First members from supporting Swing First's
22 participation in this case and in Docket No. WS-02987A-08-0049 (Swing First's
23 complaint case against Utility). It also attacks me personally, and attempts to destroy my
24 business relationship with the other Swing First Members.

1 **Q. HOW DOES UTILITY TRY TO INTIMIDATE SWING FIRST'S MEMBERS?**

2 A. Acting on behalf of Utility, George Johnson threatens to sue the members for defamation
3 if they do not proactively oppose Swing First's cases at the Commission. Based on Mr.
4 Johnson's behavioral history, a reasonable person would take this threat seriously. Mr.
5 Johnson and his companies have already filed defamation lawsuits against Attorney
6 General Terry Goddard and his wife, against me and my wife, and against several of
7 Utility's customers.

8 **Q. HOW DID UTILITY ATTACK YOU PERSONALLY?**

9 A. Acting on behalf of Utility, George Johnson attached copies of several legal pleadings
10 concerning an unfortunate incident that I was involved with in 2005. This incident is
11 irrelevant to my business ability, to this case, and in any way to my integrity.
12 Nevertheless, I will briefly discuss the incident, as Mr. Johnson has made an issue of it. I
13 hope this will put the issue to rest as it relates to this case.

14 **Q. WHAT HAPPENED IN 2005?**

15 A. In February 2005, some teen-age boys verbally assaulted my pregnant wife in our
16 neighborhood, in front of our other children. I did not see the assault. As you can
17 imagine, my wife was very upset. When I learned about the attacks, I was furious.

18 I drove with my wife to look for the boys, and when she pointed out (from afar) one of
19 the boys that she said had assaulted her, I approached him while my wife waited in the
20 car, and physically forced him to come to where she was and apologize to her. While I
21 never hit the teen-ager, I was rough with him and he was very frightened.

22 However, when my wife saw the boy, she immediately told me that she had misidentified
23 him and that this boy was in fact not the person that had verbally assaulted her. It's not
24 easy to describe how I felt at that moment, but is sufficient to say I felt horrible and knew

1 that I had wronged the boy. However, rather than try to run from this terrible mistake, I
2 sat and waited for the police to arrive. My concern at that time was solely for the boy that
3 I had frightened.

4 I was arrested and ultimately plead guilty to a charge of misdemeanor assault. The boy's
5 parents then sued both my wife and me. The case went to trial in April 2007. Plaintiffs
6 were ultimately provided a small award, but, given the size of the award, the court
7 ordered them to pay double our costs for the trial.

8 **Q. WERE THERE ANY POSITIVE LESSONS FROM THE 2005 INCIDENT?**

9 A. This incident was a test of my character and I failed it. It is the worst mistake I have ever
10 made. Immediately after my mistake, however, I recognized what I had done wrong. I
11 did not lie, try to run, or make excuses for my actions. I took responsibility for what I'd
12 done because it was the right thing to do. And I will not let anger cloud my judgment
13 again. While I will always regret the choice I made in the moment, I learned from this
14 experience that even when one makes a mistake, the right thing to do is to be honest
15 about it, accept the consequences, and try to move on. There is less shame in that, and
16 people tend to be more forgiving.

17 **Q. HOW DID UTILITY ATTEMPT TO DESTROY YOUR BUSINESS**
18 **RELATIONSHIP WITH THE OTHER SWING FIRST MEMBERS?**

19 A. In Mr. Johnson's letter, Utility suggests without any reason that there is some basis for
20 the Swing First members to require outside management and financial audits. But I
21 already provide audited financials to my investors. Utility also suggests that my personal
22 tax returns should be audited. Again, there is no basis for Utility's "suggestion," except
23 to hurt me.

1 **Q. WHAT ELSE DID UTILITY DO TO THREATEN AND INTIMIDATE SWING**
2 **FIRST'S MEMBERS?**

3 A. I have been told and I believe that Mr. Johnson is calling customers and/or Swing First
4 members and demanding to take their depositions. He threatens that if they do not give
5 in to his demand, he will get an order forcing them to provide testimony. These
6 individuals have little to no experience with legal matters, are not represented by counsel,
7 do not understand the law related to this issue, and are afraid to respond negatively to Mr.
8 Johnson's demands due to fear of reprisal.

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

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

13 **III UTILITY HAS ENGAGED IN ILLEGAL AFFILIATE TRANSACTIONS**

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

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

18 A public service corporation shall not, as to rates, charges, service,
19 facilities or in any other respect, make or grant any preference or
20 advantage to any person or subject any person to any prejudice or
21 disadvantage.

22 **Q. HAS UTILITY VIOLATED THESE REQUIREMENTS?**

23 A. Yes. I know of many occasions where Utility has favored other George Johnson
24 companies. First, Utility admits that it has been providing free irrigation water for the
25 Oasis Golf Course, owned by another George Johnson company. Second, Mr. Johnson
26 contracted in 2006 with Swing First to manage the Oasis Golf Course. As mentioned,

1 Mr. Johnson directed Utility to provide Swing First free irrigation water so that Mr.
2 Johnson would not have to actually pay cash to Swing First. Third, Utility paid for the
3 transfer of the Oasis Golf Course liquor license from Swing First. Fourth, Mr. Tompsett,
4 Utility's Executive Vice President, regularly acts on behalf of the Oasis Golf Course, as
5 does Gary Larsen, the manager of the Utility in Queen Creek.

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

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

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

12 A. Yes.

JOHNSON UTILITIES, L.L.C

5230 East Shea Boulevard * Scottsdale, Arizona 85254
PH: (480) 998-3300; FAX: (480) 483-7908

February 9, 2009

Mr. Nick Enthoven
227 Monroe Dr.
Mountain View, CA. 94040

Re: Johnson Utilities, L.L.C.
David Ashton as Managing Member of Swing First Golf, L.L.C.

Dear Swing First Golf Member:

As you may or may not know, David Ashton, as the managing member of Swing First Golf, L.L.C., ("SFG") has filed a libelous complaint against Johnson Utilities, L.L.C. with the Arizona Corporation Commission, ("ACC"). Before Mr. Ashton filed his libelous complaint with the ACC, Johnson Utilities filed a lawsuit against SFG and David Ashton in the Superior Court of Arizona. The case number for that complaint is CV2008-000141. The complaint includes claims of Tortious Interference and Defamation among other things.

I am writing to you now for two reasons. First, Mr. Ashton, purportedly acting on behalf of SFG, continues to make libelous remarks and unsubstantiated filings with the ACC in effort to slander me personally and damage Johnson Utilities. I do not know whether you are aware of Mr. Ashton's actions on your behalf or whether you support those actions. However, because Mr. Ashton claims to be acting for SFG, and therefore on your behalf, we are considering adding all members of SFG personally as defendants in the pending Superior Court case. If you do not support Mr. Ashton's actions, please let me know as soon as possible. If I do not hear from you, we will assume that you support Mr. Ashton's actions, and will proceed accordingly.

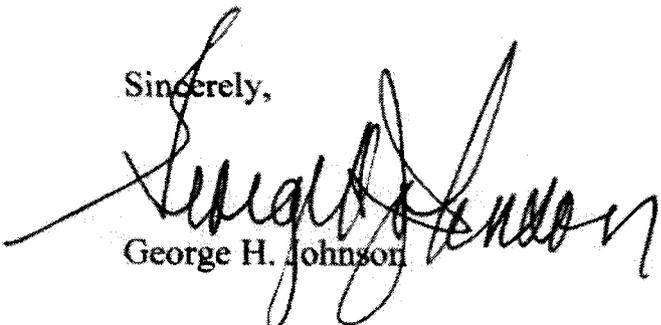
The second reason for this letter is to make you aware of the nature of the character of Mr. Ashton who is your appointed representative of SFG. Attached you will find copies of complaints filed against Mr. Ashton in the Superior Court of Arizona. These complaints are unrelated to Johnson Utilities but, in my humble opinion, show "the nature of the beast" we are all dealing with in Mr. Ashton.

A cursory review of the financials that we understand have been provided to you would strongly suggest that an outside independent management and financial audit be performed on SFG since Mr. Ashton has been managing member. We would also suggest the independent financial audit should not be limited to SFG, but in light of the other superior court complaints, be extended to Mr. Ashton's personal tax returns.

ing First Golf, L.L.C.
bruary 9, 2009
ge 2 of 2

If we can provide additional information or answer any questions, please do not
sitate to call.

Sincerely,


George H. Johnson

closure: Superior Court Complaint NO. CV2005-013279
Superior Court Judgment NO. CV2005-013279
Superior Court Complaint NO CR2005-110896-001

1 Curry, Pearson & Wooten, PLC
2 814 W. Roosevelt Street
3 Phoenix, Arizona 85007
4 Tel. (602)258-1000
5 Fax (602)523-9000
6 e-mail: kcurry@azlaw.com

7 Kristen Curry #015017
8 Attorney for Plaintiffs

MICHAEL K. JEANES
Clerk of the Superior Court

By ALAYNA HUFF, Deputy
Date 08/19/2005 Time 03:36 PM
Description Qty Amount
CASE# CV2005-013279
CIVIL NEW COMPLAINT 001 245.00
TOTAL AMOUNT 245.00
Receipt# 00007263336

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF MARICOPA

11 CURTIS LAYTON, by and through
12 his parents and guardians,
13 BRIAN LAYTON and CYNTHIA
14 LAYTON,

15 Plaintiff,

16 vs.

17 DAVID ASHTON and STASHA
18 ASHTON, husband and wife; JOHN
19 DOES I-V and JANE DOES I-V,

20 Defendants.

NO. CV2005-013279
COMPLAINT
(TORT-NON MOTOR VEHICLE)

21 Plaintiff, by and through undersigned counsel, hereby alleges as follows:

22 GENERAL ALLEGATIONS

- 23 1. Plaintiff, Curtis Layton, by and through his parents, Brian Layton and Cynthia Layton,
24 were residents of Maricopa County, Arizona, at the time the events alleged herein
25 occurred.
- 26 2. On information and belief, Defendants David Ashton and Stasha Ashton are husband
27 and wife and reside in Maricopa County Arizona. All actions against Defendants
28 complained of herein were undertaken jointly or on behalf of and for the benefit of
the marital community of David Ashton and Stasha Ashton.
3. The remaining Defendants are fictitiously-named individuals who, along with the

1 Defendants are liable for the Plaintiff's damages, as alleged herein. The Plaintiff will
2 seek leave to amend this Complaint to add proper names when the identities of the
3 fictitiously-named Defendants are ascertained.

4 4. The incident and all matters alleged herein occurred in Maricopa County in the State
5 of Arizona.

6 5. Jurisdiction and venue are appropriate for this Court. The amount in controversy
7 exceeds the minimal jurisdictional limits of this court.

8 6. On or about April 11, 2005, Defendants David Ashton and Stasha Ashton sought out
9 some unknown juvenile males who had allegedly yelled profanities at Stasha Ashton
10 earlier in the day.

11 7. Defendants David Ashton and Stasha Ashton were together in their vehicle searching
12 for the juveniles when they saw Plaintiff Curtis Layton riding his bicycle near 67th
13 Avenue and Happy Valley Road in Phoenix, Arizona.

14 8. Defendant Stasha Ashton identified Plaintiff and then Defendant David Ashton exited
15 his vehicle and attacked Curtis Layton both physically and verbally by pushing Curtis
16 off of his bicycle, throwing him against a pillar and shopping cart and yelling at him.

17 9. After already attacking Plaintiff, Defendant David Ashton then forcibly took Curtis
18 towards the car where Defendant Stasha Ashton was sitting and asked her if Plaintiff
19 was one of the juveniles involved. Defendant Stasha Ashton told her husband that
20 Plaintiff was not.

21 **COUNT ONE**
22 **(Assault)**

23 10. Plaintiff hereby realleges the allegations in paragraphs 1-9.

24 11. Defendant David Ashton intended to cause a harmful or offensive contact with Curtis
25 Layton or place Curtis Layton in imminent apprehension of such contact without
26 cause or justification.

27 12. Defendant Stasha Ashton intended to cause a harmful or offensive contact with Curtis
28

- 1 Layton or place Curtis Layton in imminent apprehension of such contact without
2 cause or justification when she went with her husband to find Plaintiff and assist him.
3 13. Defendants actions caused Curtis Layton to fear imminent offensive and harmful
4 contact.
5 14. Curtis Layton suffered physical injuries, mental anguish, pain and suffering as a direct
6 and proximate result of Defendants' intentional acts.

7 **COUNT TWO**
8 **(Battery)**

- 9 15. Plaintiffs hereby re-allege the allegations in paragraphs 1-14.
10 16. Defendant David Ashton intended to cause a harmful or offensive contact when he
11 attacked Curtis Layton without cause or justification.
12 17. Defendant Stasha Ashton intended to cause a harmful or offensive contact with Curtis
13 Layton when she went with her husband to find Plaintiff and assist him.
14 18. Defendants' actions caused Curtis Layton to suffer harmful and offensive contact.
15 19. Curtis Layton suffered physical injuries, mental anguish, pain and suffering as a direct
16 and proximate result of Defendant's intentional acts.

17 **COUNT THREE**

18 **(Intentional Infliction of Emotional Distress)**

- 19 20. Plaintiffs hereby re-allege the allegations in paragraphs 1-19.
20 21. Defendants actions in attacking Curtis Layton without cause or justification was
21 extreme and outrageous conduct.
22 22. Defendants actions either intended to cause severe emotional distress or recklessly
23 disregarded the near certainty that such distress would result from their actions and
24 conduct.
25 23. Curtis Layton suffered severe emotional distress as a result of Defendant's
26 conduct.

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WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. Compensatory damages;
- B. Punitive Damages;
- C. Costs and expenses incurred herein; and
- D. For such other and further relief as the Court deems just and appropriate under the circumstances.

DATED this 19th day of August, 2005.

CURRY, PEARSON & WOOTEN, PLC



Kristen M. Curry
Attorney for Plaintiff

FILED
6-20-07 8:25am
MICHAEL K. JEANES, Clerk
By W. Bobrowski
W. Bobrowski, Deputy

1 William D. Holm, Bar #007412
2 JONES, SKELTON & HOCHULI, P.L.C.
3 2901 North Central Avenue, Suite 800
4 Phoenix, Arizona 85012
5 Telephone: (602) 263-1749
6 Fax: (602) 200-7804
7 minuteentries@jshfirm.com

8 *Attorneys for Defendants Ashton*

9 SUPERIOR COURT OF THE STATE OF ARIZONA
10 COUNTY OF MARICOPA

11 CURTIS LAYTON, by and through his
12 parents and guardians, BRIAN LAYTON and
13 CYNTHIA LAYTON,

14 Plaintiff,

15 v.

16 DAVID ASHTON and STASHA ASHTON,
17 husband and wife, et al.,

18 Defendants.

NO. CV2005-013279

JUDGMENT

(Assigned to the Hon. Paul A. Katz)

19 The above-entitled and numbered cause having come on regularly for a jury
20 trial before the Honorable Paul A. Katz on May 29, 2007; the Plaintiff, Curtis Layton,
21 being present in person and with his parents Brian Layton and Cynthia Layton and his
22 attorney, Kristin Curry, Defendants David Ashton and Stasha Ashton, being present in
23 person and with their attorney, William D. Holm, and the parties having announced ready;
24 Plaintiff having introduced evidence in support of his complaint and Defendants having
25 introduced evidence in opposition thereto; and the matter having been submitted to the
26 jury for its determination; and the jury having returned a verdict for Plaintiff:

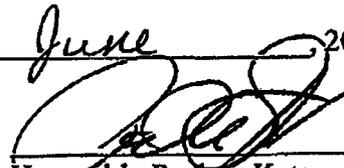
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED
that Judgment be entered, in Plaintiff's favor, and against Defendants David Ashton and
Stasha Ashton in the amount of \$9,625.00.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as the prevailing party in this action, Plaintiff is entitled to recover his taxable costs from Defendants in the amount of \$ 901.70.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Arizona Rules of Civil Procedure Rule 68(d), since Plaintiff failed to obtain a Judgment greater than Defendants' June 26, 2006 Offer of Judgment in the amount of \$10,000, Defendants Ashton are entitled to recover double their taxable costs incurred after the date of the Offer of Judgment in the amount of \$901.70.

DATED this 20th day of June 2007.



Honorable Paul A. Katz

THE STATE OF ARIZONA V. DAVID BRUCE ASHTON

CR2005-110896-001

AGGRAVATED ASSAULT, A CLASS 6 FELONY

COURT INFORMATION SHEET (CIS)

County Attorney Case Number: CA2005012841

Filing ID Number: CA2005012841-1-1

STATE v. DAVID BRUCE ASHTON
Defendant Sequence: 1

Defendant's **IN CUSTODY**
Address: 7131 WEST AVENIDA DEL SOL
PEORIA, AZ 85383

Defendant's **UNKNOWN**
Employer:

Defendant's **PUBLIC DEFENDER**
Attorney:

DEFENDANT'S DESCRIPTION:

Race: W Sex: M Hair: BRO Eyes: GRN Hgt: 510
Wgt: 165 DOB: 11/22/1970 Soc Sec #: 281606489

SID #: Unknown FBI #: Unknown Old LEJIS #: Unknown
JMS Booking #: P063574 JMS LEJIS #: Unknown

FILING STATUS:

Direct Complaint CR #: CR2005110896001 Date Filed: _____
Court Designation: RCC - GLENDALE
Justice Court Precinct: NORTH VALLEY JUSTICE

ATTORNEY: SCOTT WOLFRAM Bar ID: 014100 Location: Downtown

PRELIMINARY HEARING/GRAND JURY CHARGES:

COUNT 1: AGGRAVATED ASSAULT, A CLASS 6 FELONY

<u>Count</u>	<u>ARS</u>	<u>Date of Crime</u>
<u>1</u>	<u>13-1204A4</u>	<u>4/11/2005</u>

DEPARTMENTAL REPORTS:

DR 200550679472 - Phoenix Police Department

EXTRADITE: AO

DWL

IN THE NORTH VALLEY COURT
 STATE OF ARIZONA, COUNTY OF MARICOPA
RELEASE QUESTIONNAIRE

Information to be supplied by a prosecutor or law enforcement officer.

STATE OF ARIZONA vs. DAVID ASHTON DOB 11-22-70 CASE / BK. NO. _____

A. GENERAL INFORMATION

- Charge and Class: 13-1204 A4
- Offense Location: 6640 W. HAPPY VALLEY RD
 Date: 4-11-05 Time: 1641
- Arrest Location: 6640 W. HAPPY VALLEY RD
 Date: 4-11-05 Time: 1700

B. CIRCUMSTANCES OF THE OFFENSE

- Was a firearm or other weapon used?
 YES NO
 Type of weapon: _____
 Was anyone injured by the defendant?
 YES NO
 Was medical attention necessary?
 YES NO
 Nature of injuries: HIT HEAD ON STUCCO WALL, SCRATCHED ARM, SCRATCHES ON BACK
- Was anyone threatened by the defendant?
 YES NO
 Nature and extent of threats: ATTACKED IN THE KED
- If property offense, value of property taken or damaged:

 Was the property recovered?
 YES NO

C. CIRCUMSTANCES OF THE ARREST

- Did the defendant attempt to:
 Avoid arrest? YES NO
 Resist arrest? YES NO
 Explain: _____
- Was the defendant armed when arrested?
 YES NO
 Type of weapon: _____
- Was evidence of the offense found in the defendant's possession?
 YES NO
 Explain: _____
- Was the defendant under the influence of alcohol or drugs at the time of the offense?
 YES NO UNK

D. CRIMES OF VIOLENCE

- Relationship of defendant to victim:
NONE
 Do the victim and defendant reside together?
 YES NO
- How was the situation brought to the attention of police?
 Victim
 Third party
 Officer observed
- Have there been any previous incidents involving these same parties?
 YES NO
 Explain: _____
- Is defendant currently the subject of:
 An order of protection
 Injunction against harassment
 Any other court order
 Explain: _____

E. OTHER INFORMATION

- Is the defendant presently on probation, parole or any other form of release involving other charges or convictions?
 YES NO
 Explain: _____
- List any prior arrests, convictions, and/or F.T.A.'s:
SPEEDING, WRITS (10 yrs ago)
- Is there any indication the defendant is:
 An alcoholic? An addict?
 Mentally disturbed? Physically ill?
- Is the defendant currently employed?
 YES NO
 With whom REACTIVITY INC
 How long 4 MONTHS
 Nature of employment BUSINESS DEVELOPMENT
- Where does the defendant currently reside?
7131 W. Avenida Del Sol
 With whom WIFE, KIDS
 How long 22 YEARS
- What facts indicate the defendant will flee if released?
 Explain: NONE
- What facts does the State have to oppose an unsecured release?
 Explain: _____

E. DRUG OFFENSES

1. If the defendant is considered a major drug dealer, please state the supporting facts:

2. What quantities and types of illegal drugs are directly involved in this offense?

 Approximate monetary value:

3. Was any money seized?
 YES NO
 Amount: _____
4. Were any automatic weapons in the possession of the defendant at the time of the arrest?
 YES NO
 Quantity and type: _____

SECTION-III: Probable Cause Statement

1. Please summarize and include the information which establishes probable cause for the arrest:
 ON 4-11-05 AT APPROX 1641 HRS ADI COMMITTED
 ABB ASSAULT AT 64ND W- Happy Valley Rd by
 mis takenly throwing a VI Curtis Canyon (13yrs)
 off his bike, throwing him up against a street
 pillar in front of Walgreens, ADI then picked
 Curtis up off the ground, dragged him
 over to his wife, who was waiting in her
 car, was going to make Curtis apologize
 to his wife for cursing at her ADI
 asked his wife if Curtis was the correct
 kid she said "No, that's not him ADI
 let Curtis go & apologized & then
 waited for P.D. to arrive.

**** If a fugitive arrest, a form IVA must also be completed ****

MARICOPA COUNTY JUSTICE COURT PRECINCTS

- | | |
|-----------------------|------------------------|
| 1. Buckeye | 13. Northwest Phoenix |
| 2. Central Phoenix | 14. Peoria |
| 3. Chandler | 15. Scottsdale |
| 4. East Mesa | 16. South Mesa/Gilbert |
| 5. East Phoenix #1 | 17. South Phoenix |
| 6. East Phoenix #2 | 18. Tempe East |
| 7. Gila Bend | 19. Tempe West |
| 8. Glendale | 20. Tolleson |
| 9. Maryvale | 21. West Mesa |
| 10. North Mesa | 22. West Phoenix |
| 11. North Valley | 23. Wickenburg |
| 12. Northeast Phoenix | |

Urgent to AD 2003-046, the oath has been administered pursuant to the law and required procedure.

(PLEASE REFER TO PRECINCT MAP)

JUDICIAL OFFICER REVIEW OF PROBABLE CAUSE STATEMENT AND COMPLAINT ON OATH OR AFFIRMATION

I certify that the information presented is true to the best of my knowledge.

ARNETT 7762
 ARRESTING OFFICER / SERIAL NUMBER

PHX P.D. 602 495 5009
 AGENCY / DUTY PHONE NUMBER

4-11-05
 DATE

- Complaint review
 - Witness sworn
 - Reviewed Form IV
 - Other sources: _____
 - PC determined
- Judicial Office _____

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

**REVISED DIRECT TESTIMONY
OF
SONN S. ROWELL
ON BEHALF OF
SWING FIRST GOLF LLC
MARCH 2, 2009**

**REVISED DIRECT TESTIMONY
OF
SONN S. ROWELL
ON BEHALF OF
SWING FIRST GOLF LLC
MARCH 2, 2009**

TABLE OF CONTENTS

	EXECUTIVE SUMMARY	iii
I	INTRODUCTION AND QUALIFICATIONS	1
II	GEORGE JOHNSON AND HIS UTILITY	3
A	Who Is George Johnson?	3
B	George Johnson and His Companies Paid the Largest Civil Environmental Settlement in Arizona History	3
C	George Johnson and His Companies Paid One of the Largest Settlements in Federal History for Bulldozing the San Juan River	5
D	Utility Discharged Raw Sewage into a Neighborhood Wash.....	5
E	Utility Harassed Customers with Frivolous Defamation Lawsuits.....	6
F	Utility Illegally Stored Dangerous Sewage Sludge at Its Treatment Plant.....	6
G	The 2008 Environmental Infractions by Utility Were Nothing New	7
H	Utility Knowingly and Illegally Charges Its Customers for Taxes.....	7
I	Utility May Have Delayed this Rate Filing So It Could Continue Overcharging Its Water Customers Millions of Dollars Per Year.....	7
III	THE COMMISSION SHOULD SEND A STRONG MESSAGE TO UTILITY	8
A	The Commission Needs to Deal Harshly with Utility’s Blatant Disregard for its Customers, Public Safety, the Environment, and Its Public Service Obligations.....	8
B	Utility Should Not Be Allowed to Increase Its Rates until Its Books and Management Practices Have Been Thoroughly Investigated	9
C	Utility Should Be Required to Immediately Reduce Its Water Rates and Make Refunds	11
D	Utility Should Be Required to Refund Its Illegal Superfund Tax Collections	12
E	Utility’s Pecan Wastewater Treatment Plant Should Not Be Included in Rate Base	12
F	Utility Should Be Required to Dismiss All Pending Defamation Lawsuits against Its Customers, and Pay All of Their Court Costs and Legal Fees	13
G	Utility Should Be Fined for Its Blatant Disregard of Its Public Service Obligations, Environmental Laws, and Explicit Commission Orders.....	13
H	Utility Should Be Penalized with a Reduced Rate of Return on Equity.....	14
I	Following Completion of the Independent Management and Financial Audits, the Commission Should Require Utility to Demonstrate Why It Should Not Surrender Its Certificate of Convenience and Necessity	14
J	The Commission Should Bifurcate this Case into Two Phases.....	14

1 **EXECUTIVE SUMMARY**

2 Sonn S. Rowell testifies as follows:

3 Ms. Rowell first brings a large number of unusual activities to the Commission's attention.

- 4 • George H. Johnson is Utility's majority owner and is its ultimate decision maker.
- 5 • In 2007, George Johnson and his companies paid the largest civil environmental
6 settlement in Arizona history.
- 7 • In 2008, George Johnson and his companies paid one of the largest settlements in federal
8 history for bulldozing the San Juan River
- 9 • In 2008, Utility discharged raw sewage into a neighborhood wash. This issue is still not
10 resolved.
- 11 • In 2008, Utility harassed customers with frivolous defamation lawsuits.
- 12 • In 2008, Utility illegally stored dangerous sewage sludge at a treatment plant.
- 13 • Utility's 2008 environmental infractions were nothing new. ADEQ and ADWR have
14 previously imposed significant fines on Utility.
- 15 • Utility knowingly and illegally charges its customers for taxes.
- 16 • Utility may have delayed this rate filing so it could continue overcharging its water
17 customers millions of dollars per year.

18 The Commission needs to deal harshly with Utility's blatant disregard for its customers, public
19 safety, the environment, and its public service obligations. Ms. Rowell recommends that the
20 Commission take the following actions:

- 21 • Utility should not be allowed to increase its rates until its books and management
22 practices have been thoroughly investigated.
- 23 • Utility should be required to immediately reduce its water rates and make refunds.
- 24 • Utility should be required to refund its illegal superfund tax collections.
- 25 • Utility's pecan wastewater treatment plant should not be included in rate base.
- 26 • Utility should be required to dismiss all pending defamation lawsuits against its
27 customers, and pay all of their court costs and legal fees.
- 28 • Utility should be fined for its blatant disregard of its public service obligations,
29 environmental laws, and explicit commission orders.
- 30 • Utility should be penalized with a reduced rate of return on equity.
- 31 • Following completion of the independent management and financial audits, the
32 Commission should require Utility to demonstrate why it should not surrender its
33 certificate of convenience and necessity.
- 34 • The Commission should bifurcate this case into two phases.

1 **I INTRODUCTION AND QUALIFICATIONS**

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

3 A. My name is Sonn S. Rowell. I am a managing member of Desert Mountain Analytical
4 Services, PLLC, P.O. Box 51628, Ahwatukee, Arizona 85076.

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK
6 EXPERIENCE.**

7 A. I hold a Bachelor of Science degree with a major in accounting from Arizona State
8 University. I have obtained an accountancy teaching certificate No. 19397 from the State
9 Board of Directors for Community Colleges of Arizona in Phoenix, Arizona. I am also a
10 Certified Public Accountant licensed by the Arizona State Board of Accountancy.

11 From 1994 through 1996, I was a staff accountant for Family Service Agency in Phoenix,
12 Arizona. Between 1996 and 1998, I held various positions in both the staff and senior
13 accounting levels. My job responsibilities included the preparation of spreadsheets, sales
14 and property tax reports, and CAM reconciliations for numerous industrial business
15 parks. I also was responsible for the preparing Bills of Materials (BOMs) for government
16 contracts. My job responsibilities also included the posting of cash receipts, cash
17 disbursements, as well as to maintain companies.

18 From 1998 through 2002, I was employed by the Arizona Corporation Commission, first
19 as a Utility Auditor III and thereafter as a Rate Analyst II. As a Utility Auditor III, my
20 job classification included the analysis and determination of rate increase applications for
21 public utilities. I was responsible for conducting onsite inspections of utilities assets, and
22 audited utility revenues, expenses, and plant additions as part of my analysis of rate
23 applications. This analysis required coordination with other departments regarding
24 specialty areas of utility analysis. My duties also included the review and analysis of
25 financial records and other documents of regulated utilities for accuracy, consistency,

1 completeness and reasonableness. I also prepared work papers and schedules supporting
2 expert testimony and staff reports in connection with utility applications for increases in
3 rates, financings, and other matters.

4 As a Rate Analyst II, my job classification included an analysis of the necessity and
5 amount of revenue recommended in utility rate case proceedings. I revised standard
6 filing documents, trained new employees, and reviewed peer work product. In addition, I
7 analyzed various tariff filings to determine the impact on the company's financial
8 conditions. I also participated in advisory groups formed to develop recommended
9 policies and procedures to regulate utilities.

10 During 2002 and 2003, I operated as a sole proprietor, and in 2004, I organized Desert
11 Mountain Analytical Services, PLLC. My primary business in both structures is the
12 same; to assist my small business clients regularly with financial and accounting issues.
13 Additionally, I prepare quarterly and year-end payroll reporting for clients, corporate and
14 individual tax returns, as well as prepare annual reports for the Arizona Corporation
15 Commission Utilities and Corporation Divisions and Property Tax Report for the Arizona
16 Department of Revenue. In addition, I represent small water and wastewater utilities
17 before the Arizona Corporation Commission for rate increase and financing applications,
18 as well as companies that are seeking a new Certificate of Convenience and Necessity
19 ("CC&N" to provide utility service in Arizona.

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

21 A. I am testifying on behalf of Swing First Golf, LLC, a customer of Johnson Utilities LLC
22 ("Utility"), the applicant in this case.

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

24 A. The purpose of my testimony is to bring to the Commission's attention certain activities
25 and practices by George Johnson and his Utility that the Commission should consider as

1 part of this rate case. I then recommend how the Commission should address these
2 practices.

3 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

4 A. In Section II of my testimony I will discuss recent activities by George Johnson, the man
5 who controls Utility and who is also its majority owner. I will then discuss activities by
6 Utility that are consistent with those of Mr. Johnson. I have attached several published
7 reports and other documents that I reviewed in preparing my testimony. In Section III of
8 my testimony I make nine recommendations for the Commission to consider in this case.
9 My recommendations are made based upon these published reports and documents, and
10 the incidents discussed by Mr. Ashton in his testimony.

11 **II GEORGE JOHNSON AND HIS UTILITY**

12 **A Who Is George Johnson?**

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

14 A. George H. Johnson is Utility's majority owner and is its ultimate decision maker. Please
15 see Exhibit SSR-1. Mr. Johnson also controls several other companies that have been
16 involved in litigation during recent years, including Johnson International, Inc. ("Johnson
17 International"), and General Hunt Properties, Inc. ("General Hunt").

18 **B George Johnson and His Companies Paid the Largest Civil Environmental**
19 **Settlement in Arizona History**

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

22 A. Yes. Exhibit SSR-2 is a copy of a December 2007 press release from the Arizona
23 Department of Environmental Quality ("ADEQ") concerning its lawsuit against George
24 Johnson, his affiliate companies, and his contractors. ADEQ summarizes the lawsuit and
25 settlement as follows:

1 In 2005 the Arizona Attorney General brought a lawsuit on behalf of the
2 Arizona Department of Environmental Quality (“ADEQ”), the Arizona State
3 Land Department, the Department of Agriculture, the Arizona State Museum
4 and the Arizona Game and Fish Commission. The suit charged George
5 Johnson, several of his companies, and several Johnson contractors with
6 numerous violations of state law and destruction of natural and archeological
7 resources, including:

- 8 • Bulldozing and clearing of nearly 270 acres of State Trust Lands located
9 in and near the Ironwood National Monument and the Los Robles
10 Archeological District.
- 11 • Bulldozing and clearing an estimated 2,000 acres of private lands in the
12 Santa Cruz River Valley without obtaining permits required by state law.
- 13 • Destroying portions of seven major Hohokam archeological sites, circa
14 A.D. 750-1250.
- 15 • Destroying more than 40,000 protected native plants on State Trust Lands,
16 including Saguaro, Ironwood, Mesquite, Palo Verde and other protected
17 species.
- 18 • Violating the state’s clean water laws by failing to secure required permits
19 and discharging pollutants into the Little Colorado River, the South Fork
20 of the Little Colorado River and tributaries of the Santa Cruz River.
- 21 • Negligently causing a disease epidemic that resulted in the death of at least
22 21 rare Arizona desert bighorn sheep and serious injury to numerous
23 others.

24 **Q. HOW MUCH DID ADEQ FINE GEORGE JOHNSON AND HIS AFFILIATE**
25 **COMPANIES?**

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

29 **Q. CAN YOU PROVIDE THE COMMISSION ANY MORE INFORMATION**
30 **CONCERNING MR. JOHNSON’S ACTIVITIES?**

31 A. Yes. Exhibit SSR-3 is a copy of a February 2008 article from Phoenix Magazine. The
32 article, written by Jana Bommersbach, provides more insight regarding Mr. Johnson’s
33 activities. This article provides another basis for my recommendations to the
34 Commission.

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, Johnson International, General Hunt,
7 and contractors for illegally bulldozing, filling, and diverting approximately five miles of
8 the Santa Cruz River. In October 2008, George Johnson and the other defendants agreed
9 to pay a civil penalty of \$1.25 million, the largest penalty in the history of EPA’s Pacific
10 Southwest Region, and one of the largest in EPA’s history under Section 404 of the Clean
11 Water Act. See Exhibit SSR-4.

12 **D** **Utility Discharged Raw Sewage into a Neighborhood Wash**

13 **Q. DID UTILITY DISCHARGE RAW SEWAGE INTO A NEIGHBORHOOD**
14 **WASH?**

15 A. According to published reports, over several months in the spring of 2008, Utility
16 dumped about 10,000 gallons of raw sewage into the Queen Creek Wash and an
17 adjoining neighborhood, allegedly as a result of inadequate pump sizing at its
18 neighboring sewage-treatment plant. Reportedly, the 2008 discharges were only months
19 after a December 2007 discharge from the same plant. Please see Exhibit SSR-5 for
20 more details.

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

22 A. According to additional published reports, Utility entered into a consent decree with
23 ADEQ to clean and disinfect the wash. Fines may still be imposed.

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

1 A. Yes. Exhibit SSR-6 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 based on
6 an engineering design report that described the installation of two 75 horsepower
7 pumps. However, at the time of the SSOs, 35 horsepower pumps were operating
8 at the lift station. I would like to know why that was the case and if the difference
9 in pumps was a contributing factor to the SSOs.

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

14 **E Utility Harassed Customers with Frivolous Defamation Lawsuits**

15 **Q. WERE THERE ANY OTHER INCIDENTS CONNECTED WITH UTILITY'S**
16 **SEWAGE DISCHARGE THAT CONCERN YOU?**

17 A. Yes. According to published reports, neighbors were concerned for their health and
18 safety as a result of Utility dumping raw sewage into their neighborhood. Two residents
19 organized a protest and posted pointed comments on a community web page. In
20 retaliation, Utility sued the two residents for defamation. As you can imagine, since that
21 time the residents have apparently not spoken out. Therefore it's hard to know if Utility
22 has improved the situation or simply succeeded in silencing its customers through
23 intimidation. Please see Exhibit SSR-7 for more details.

24 **F Utility Illegally Stored Dangerous Sewage Sludge at Its Treatment Plant**

25 **Q. WERE THE RAW SEWAGE DISCHARGES INTO THE QUEEN CREEK WASH**
26 **THE ONLY ENVIRONMENTAL VIOLATIONS COMMITTED BY UTILITY IN**
27 **2008?**

28 A. It does appear there were more. Based on published reports, a surprise inspection during
29 September 2008 by ADEQ caught Utility storing dangerous sewage sludge in uncovered

1 trenches. Utility dumped approximately 34,713 gallons of the sludge in trenches mixed
2 with construction debris. ADEQ issued two violation notices with 15 separate
3 infractions. Please see Exhibit SSR-8 for more details.

4 **G The 2008 Environmental Infractions by Utility Were Nothing New**

5 **Q. HAS UTILITY PREVIOUSLY VIOLATED STATE ENVIRONMENTAL LAWS?**

6 A. Apparently. In 2003, ADEQ fined Utility \$80,000 for building and operating a water
7 system without obtaining the necessary permits. See:

8 <http://www.azdeq.gov/function/forms/download/2003/summary.pdf> (page 14). This
9 followed a \$6,000 fine in 2001 for modifying a water treatment plant without obtaining
10 construction approvals. See

11 <http://www.azdeq.gov/function/forms/download/2001/enforce.pdf> (page 4).

12 The Arizona Department of Water Resources has also had its issues with Utility. In
13 2003, it fined Utility \$90,000 for using far more groundwater than it was entitled to. See,
14 Exhibit SSR-3 at 2.

15 **H Utility Knowingly and Illegally Charges Its Customers for Taxes**

16 **Q. IS SWING FIRST CHARGED A MONTHLY SUPERFUND TAX?**

17 A. Yes. Utility bills Swing First and all of its water and effluent customers, each month for
18 a Superfund "Tax" at the rate of \$0.0065/1000 gallons. This tax is calculated based on
19 customer usage. Yet, in Decision No. 64598, dated March 4, 2002, the Commission told
20 Utility that it could not pass usage-based taxes to its water customers, only revenue based
21 taxes. The Commission should determine whether, by charging another usage-based tax
22 to its water customers, Utility knowingly disregarded this Commission Order.

23 **I Utility May Have Delayed this Rate Filing So It Could Continue**
24 **Overcharging Its Water Customers Millions of Dollars Per Year**

25 **Q. WHEN WAS UTILITY REQUIRED TO FILE THIS 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. WHAT DOES UTILITY'S APPLICATION SHOW CONCERNING WATER**
9 **RATES?**

10 A. Schedule A-1 shows that, even by Utility's own calculations, Utility's water business was
11 significantly overearning. In the 2007 test year, water rates would have to have been
12 reduced by over \$2,000,000 to eliminate the overearning.

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

14 A. Very much. If Utility was overearning by such a large amount in 2007, it likely was also
15 significantly overearning in 2006. It would be pretty unusual for a utility's earnings to
16 swing radically from year to year. Swing First asked Utility to provide a schedule in the
17 form of Schedule A-1 for 2006, but Utility refused to do so. If Utility was not
18 overearning in 2006, it should have jumped at the chance to demonstrate that fact.
19 Therefore, it seems more likely than not that Utility's unauthorized delay in filing this
20 case cost its water customers millions of dollars.

21 **III THE COMMISSION SHOULD SEND A STRONG MESSAGE TO UTILITY**

22 A **The Commission Needs to Deal Harshly with Utility's Blatant Disregard for**
23 **its Customers, Public Safety, the Environment, and Its Public Service**
24 **Obligations**

1 **Q. HOW SHOULD THE COMMISSION DEAL WITH UTILITY IN THIS RATE**
2 **CASE?**

3 A. I have nine recommendations to deal with Utility's blatant disregard for its customers,
4 public safety, the environment, and its public service obligations:

- 5 1. Utility should not be allowed to increase its rates until its management and financial
6 practices are investigated.
- 7 2. Utility should be required to immediately reduce its water rates and make refunds.
- 8 3. Utility should be required to refund – in cash, not credits – its illegal superfund tax
9 collections.
- 10 4. Utility's Pecan Wastewater Treatment Plant should not be included in rate base.
- 11 5. Utility should be required to dismiss all pending defamation lawsuits against its
12 customers, and pay all of their court costs and legal fees.
- 13 6. Utility should be fined for its blatant disregard of its public service obligations,
14 environmental laws, and explicit commission orders.
- 15 7. Utility should be penalized with a reduced rate of return on equity.
- 16 8. Following the completion of the independent management and financial audits, the
17 Commission should require Utility to demonstrate why it should not surrender its
18 certificate of convenience and necessity.
- 19 9. The Commission should bifurcate this case into two phases.

20 I will discuss each of these recommendations in order.

21 **B Utility Should Not Be Allowed to Increase Its Rates until Its Books and**
22 **Management Practices Have Been Thoroughly Investigated**

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

- 1 A. Swing First is only one of Utility's many customers, and is also only one of hundreds or
2 thousands of companies that has dealt with Utility. It is possible that Swing First is not
3 the only entity that has been treated unfairly by Utility.
- 4 • If Mr. Ashton is personally aware of four possible illegal affiliate transactions, there
5 potentially could be many more.
 - 6 • I am aware of George Johnson's intimidation of Swing First and other customers
7 through defamation lawsuits, but how many other similar actions has George Johnson
8 taken to intimidate and silence customers?
 - 9 • If ADEQ has uncovered two serious environmental violations in just the last year, and
10 four in this decade, how many more threats to public health and safety have gone
11 undiscovered?
 - 12 • Based on Mr. Johnson's possible use of Utility to fund non-regulated activities, and
13 Utility's intentional delay in filing its rate case, it is evident the Utility's financial
14 records warrant further scrutiny.

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

16 A. I understand that the Commission's resources are strained, especially given the State's
17 current budget crisis. Therefore, I am asking that the Commission Order Staff to select a
18 firm or firms to perform independent management and financial audits on Utility. These
19 audits should be funded by Utility. The financial audit should not be limited to Utility,
20 but should also investigate any transactions George Johnson's affiliated companies have
21 had with Utility.

22 The management audit should also be conducted at Utility's expense to determine
23 whether Utility is a fit and proper entity to continue to hold its certificate of convenience
24 and necessity.

1 As part of the audit process, the management auditors should hold a series of well
2 publicized customer open houses, where customers can discuss their customer-service
3 experiences. Utility would not be allowed to attend these meetings to ensure that
4 customers are not intimidated. Utility should also be required to provide notice of these
5 open houses by direct mail or bill insert. The notice should include a phone number,
6 address, and e-mail address where customers could directly contact the auditors. I also
7 recommend the auditors interview present and former utility employees, as well as
8 Arizona environmental regulators.

9 The management auditors should at least investigate the following well publicized
10 incidents, and personal experiences of Mr. Ashton:

- 11 • Prior activities and fines related to George Johnson and his companies;
- 12 • Utility's discharges of raw sewage into the Queen Creek Wash;
- 13 • Utility's illegal storage of sewage sludge on site;
- 14 • Utility's harassment of customers through defamation lawsuits;
- 15 • Other customer service issues;
- 16 • Utility's disregard of Commission Orders;
- 17 • Utility's provision of free water to its affiliates; and
- 18 • Other illegal transactions, if any, between Utility and its affiliates.

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

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

23 **C** **Utility Should Be Required to Immediately Reduce Its Water Rates and**
24 **Make Refunds**

25 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE REQUIRED TO**
26 **IMMEDIATELY REDUCE ITS WATER RATES AND MAKE REFUNDS?**

1 A. As I discussed above, Utility disregarded a Commission Order to file a rate case by May
2 1, 2007, using a 2006 test-year. When Utility finally filed this rate case with a 2007 test
3 year, the reason became apparent. Utility was substantially over-earning from its water
4 customers during the 2007 test year, even based on Utility's own calculations. This
5 would have been discovered much earlier, if Utility had filed its rate case when ordered
6 to. Utility almost certainly benefited from this unauthorized delay to the detriment of its
7 customers.

8 To remedy this, the Commission should require Utility to immediately reduce its water
9 rates to at least the levels Staff proposes in direct testimony. If there is evidence, based
10 on other parties' filings, that the rates should be even lower, then the rates should be
11 reduced even further. Finally, to compensate customers for Utility's delayed filing, the
12 Commission should order that Utility refund all charges made in excess of those levels,
13 retroactive to January 1, 2007.

14 **D Utility Should Be Required to Refund Its Illegal Superfund Tax Collections**

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

17 A. As of March 4, 2002, Utility knew that it could not lawfully charge its customers a tax
18 based on usage. Yet, it apparently disregarded this Commission Order. Utility should be
19 ordered to calculate the amounts collected since March 4, 2002, and make refunds to its
20 customers.

21 **E Utility's Pecan Wastewater Treatment Plant Should Not Be Included in Rate**
22 **Base**

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

25 A. Commissioner Mundell recommended that the Commission closely scrutinize this plant.
26 The NOV's have still not been resolved, even one year after the test year. It should be

1 disallowed until Utility's next rate case, where Utility would have the opportunity to
2 demonstrate that the plant is no longer a threat to public safety.

3 **F Utility Should Be Required to Dismiss All Pending Defamation Lawsuits**
4 **against Its Customers, and Pay All of Their Court Costs and Legal Fees**

5 **Q. WHY ARE YOU RECOMMENDING THAT UTILITY BE REQUIRED TO**
6 **DISMISS ALL PENDING DEFAMATION LAWSUITS AGAINST ITS**
7 **CUSTOMERS, AND PAY ALL OF THEIR COURT COSTS AND LEGAL FEES?**

8 A. Utility is using the courts to intimidate its customers. I am not aware of any other
9 Arizona utility that has ever filed a defamation lawsuit against a customer. Yet Mr.
10 Johnson has sued at least three customers for defamation, as well as filing a defamation
11 lawsuit against the Arizona Attorney General.

12 It is a huge expense, both in time and money, to defend against a lawsuit, even one that is
13 frivolous. The Commission needs to stop any practice designed to intimidate customers
14 from speaking out against their monopoly utility provider. The Commission needs to
15 hear from any of Utility's customers who feel they have been wronged, and needs to
16 order Utility to dismiss all pending defamation lawsuits against its customers, and pay all
17 of their court costs and legal fees.

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

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

23 A. Fines are clearly warranted for Utility. The Commission needs to send a clear message to
24 Utility that it cannot continue to incorrectly charge customers, disregard Commission
25 Orders, and endanger the public health and safety. But I caution the Commission to
26 remember that neither Mr. Johnson nor the Utility's behavior appear to be impacted by

1 fines. However, the fines assessed against the Utility could be used to help fund the
2 independent audits, and/or aid the customers of Utility that have been overcharged. Fines
3 may set an example for other utilities, but if the goal is to change Mr. Johnson's behavior,
4 and ultimately protect the public interest, the action most likely to make a difference is to
5 revoke or suspend his CC&N.

6 **H Utility Should Be Penalized with a Reduced Rate of Return on Equity**

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

9 A. In addition to imposing fines, the Commission should penalize Utility by reducing the
10 allowed rate of return on equity when new rates are set. This may be a rare penalty, but
11 the Utility's behavior is unprecedented.

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

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

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

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

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

1 A. Because of the apparent 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 overcharges, including the illegal Superfund charges. The
10 Commission would also Order the financial and management audits. Finally, the
11 Commission would Order Utility to dismiss all pending defamation lawsuits against its
12 customers and pay all of their court costs and legal fees.

13 In Phase II, the Commission would:

- 14 • Evaluate the results of the financial and management audits;
15 • Determine the amount of any fines to be paid by Utility;
16 • Determine whether to reduce Utility's allowed rate of return on equity;
17 • Set new wastewater rates (and new water rates if the ROE is reduced); and
18 • Determine whether Utility should show cause that it is a fit and proper entity to
19 continue holding a CC&N.

20 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

21 A. Yes.

Docket No. WS-02987A-08-0180
Swing First Golf LLC
Third Set of Data Requests to Johnson Utilities LLC

Exhibit SSR-1

(RATE CASE)

3.3 Please identify the members of Johnson Utilities LLC.

Response: The members of Johnson Utilities are The George H. Johnson Revocable Trust and Connorg, LLC.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254

3.4 Please admit or deny that George Johnson acts as the Chief Executive of Johnson Utilities LLC. If your answer is "deny," please explain your answer.

Response: Mr. Johnson owns the majority interest in Johnson Utilities, LLC, which gives him ultimate decision-making authority for the company.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254

3.5 Please admit or deny that Utility's affiliated entity and/or George Johnson filed a defamation lawsuit or counterclaim against Arizona Attorney General Terry Goddard and/or his office.

Objection: Johnson Utilities objects to this data request on the grounds that legal actions filed by affiliates of Johnson Utilities and/or George Johnson are not relevant to the rate case and are outside the scope of discovery. Johnson Utilities further asserts that legal pleadings filed in courts of law are public documents which speak for themselves.

Prepared by: Brian Tompsett, Executive Vice President
Johnson Utilities, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254



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.

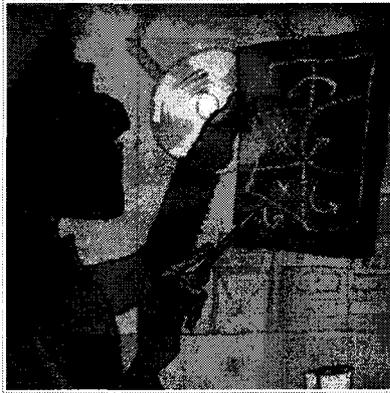
“We are committed to enforcing our environmental and heritage protection laws to preserve the priceless resources that make this state unique,” Attorney General Goddard said. “This resolution sends a strong message to anyone who would despoil our heritage.”

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?**



Illustrations by Gilbert Ford

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.

"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."

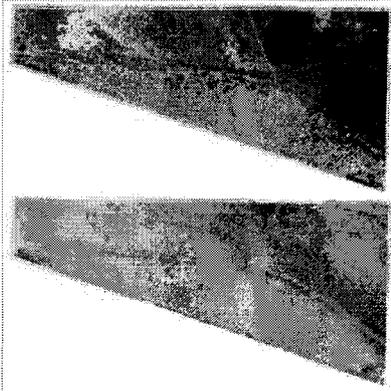
But he bemoans that the Arizona lawsuit has left nothing but a negative impression of him. "My business activities have come under scrutiny for a number of reasons, and the papers write about these events as if Atilla (sic) the Hun were let loose upon Arizona."

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 Penne

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
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ENRD
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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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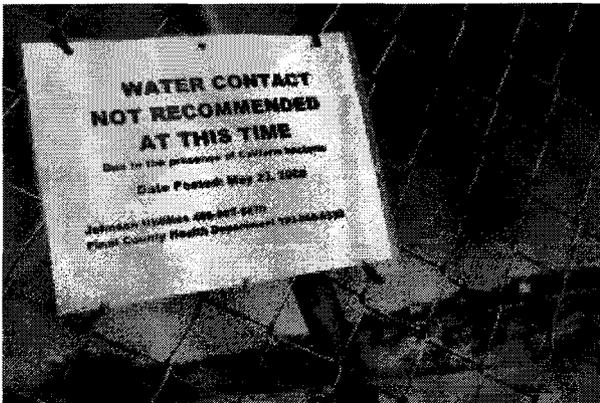
Tribune

EAST VALLEY • SCOTTSDALE

June 11, 2008

ACC members pursue probe into Q.C. sewage spills

By Sarah Boggan
Tribune



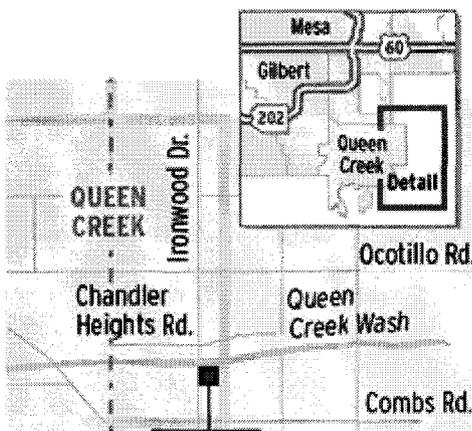
A sign posted on a fence blocking access to the Queen Creek Wash warns of the presence of *E. coli* in the water in the wash in Pinal County near Queen Creek.

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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JEFF HATCH-MILLER
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Exhibit SSR-6

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL June 10, 2008

Arizona Corporation Commission
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JUN 10 2008

DOCKETED BY
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Chairman Gleason
Commissioner Hatch-Miller
Commissioner Mayes
Commissioner Pierce

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

Tribune

EAST VALLEY • SCOTTSDALE

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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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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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