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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES L.L.C. D/B/A JOHNSON  
UTILITIES COMPANY FOR AN EXTENSION  
OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY FOR WATER AND  
WASTEWATER SERVICE.

DOCKET NO. WS-02987A-05-0088

**RENEWED PETITION TO AMEND  
DECISION 68235 PURSUANT TO  
A.R.S. §40-252  
AND  
NOTICE OF SUBSTITUTION OF  
COUNSEL**

BROWNSTEIN HYATT FARBES SCHRECK, LLP, A LAW CORPORATION  
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In Decision 68235 (October 25, 2005), the Arizona Corporation Commission ("Commission") conditionally approved the application of Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") to extend its certificate of convenience and necessity ("CC&N") to provide water and wastewater services for a development known as Quail Run. One of the conditions in Decision 68235 requires the Company to file a copy of the aquifer protection permit ("APP") for the planned but as yet unconstructed Copper Basin regional water reclamation plant ("Copper Basin WRP"). For the reasons set forth in this petition, Johnson Utilities respectfully requests that the Commission amend Decision 68235 to remove the requirement that the Company file a copy of the APP for the Copper Basin WRP. Alternatively, the Company requests that the Commission extend the deadline for filing a copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

The requirement that Johnson Utilities file a copy of the APP for the Copper Basin WRP also appears in Decision 68237 (Docket WS-02987A-04-0288) and Decision 68961 (Docket WS-02987A-05-0695). Contemporaneous with the filing of this petition, Johnson Utilities is filing petitions to amend Decisions 68237 and 68961 on the same grounds.

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INTRODUCTION AND BACKGROUND

1  
2 In Decision 68235, the Commission conditionally approved the extension of Johnson  
3 Utilities' water and sewer CC&Ns to include the Quail Run development (approximately 351  
4 residential lots). In the decision, the Commission ordered that "Johnson Utilities ... file with  
5 Docket Control, as a compliance item in this docket, the Unified (Aquifer Protection) Water  
6 Quality Permits issued by ADEQ for the Copper Basin Regional Wastewater Treatment Facility,  
7 within 365 days of the decision in this case," or October 25, 2006.<sup>1</sup> The decision further ordered  
8 that if the Company did not comply with the specified time for compliance, the CC&N extension  
9 would be deemed null and void.

10 In a letter dated and docketed September 19, 2006, Johnson Utilities requested a one-year  
11 extension of the compliance deadline for filing a copy of the APP for the planned Copper Basin  
12 WRP, to October 25, 2007. The Company explained that this would bring the compliance date  
13 into synchronization with the same compliance item in Decision 68237 in Docket WS-02987A-  
14 04-0288. In a Staff Memorandum dated and docketed September 25, 2006, Staff recommended  
15 extension of the compliance deadline in Decision 68235 from 365 days to 24 months as requested  
16 by Johnson Utilities. It does not appear that the Commission acted upon the Company's request  
17 for a one-year extension of the deadline in this docket. However, the Commission did  
18 subsequently address the compliance deadline for filing the APP for the Copper Basin WRP in  
19 Decision 70411 (Docket WS-02987A-06-0667) discussed below.

20 In a letter dated and docketed October 4, 2007, Johnson Utilities requested an additional  
21 two-year extension of the compliance deadline for filing a copy of the APP for the planned  
22 Copper Basin WRP, to October 25, 2009. The Company explained in the filing that although the  
23 APP application for the facility was submitted to the Arizona Department of Environmental  
24 Quality ("ADEQ") on May 4, 2006, processing of the permit was unexpectedly delayed due to  
25 title problems associated with the proposed plant site property. Johnson Utilities was forced to  
26 file a lawsuit in Pinal County Superior Court Case No. CV2006-1607 to obtain clear title to the  
27 plant site property, and the Company ultimately obtained clear title to the property. The

28 <sup>1</sup> Decision 68235 at page 11, lines 10-13.

1 Company also informed Staff in subsequent conversations that the plant site property was zoned  
2 for industrial use and not for use as a wastewater treatment plant site, which was another issue  
3 that needed to be addressed. For these reasons, Johnson Utilities requested an extension of the  
4 original compliance deadline for submitting the APP for the Copper Basis WRP until October 25,  
5 2009.

6 In a Staff Memorandum dated December 20, 2007, Staff recommended that the due date  
7 for Decision 68235 be extended to October 25, 2009, as requested by Johnson Utilities in its  
8 October 4, 2007 letter. In addition, Staff addressed the Company's prior September 19, 2006,  
9 request for a one-year extension of the compliance deadline, stating as follows:

10 Staff was unable to locate a Commission Order or a subsequent Procedural Order  
11 wherein any ruling was made on the request for extension of the 12 month APP  
12 requirement in Decision No. 68235. Staff, therefore, recommends that the  
13 Company's request to increase the Decision No. 68235 due date from 365 days to  
14 24 months be retroactively approved.

15 On December 27, 2007, the Company filed a Notice of Filing and Request for Order to  
16 Release and Extend Certain Compliance Requirements of Decision No. 68235 requesting, among  
17 other things, that the Hearing Division issue a procedural order or recommended opinion and  
18 order extending the compliance date for filing a copy of the APP for the Copper Basin WRP as  
19 recommended by Staff. The Commission approved the requested extension of the compliance  
20 date in Decision 70411 in Docket WS-02987A-06-0667, ordering as follows:

21 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., is hereby granted an  
22 extension of time, until October 25, 2009, to file the Aquifer Protection Permits  
23 for the Copper Basin Regional Wastewater Treatment facility, as ordered in  
24 Commission Decisions Nos. 68235 and 68237.<sup>2</sup>

25 In a letter to the Commission's Utilities Division Director dated September 15, 2009, and  
26 docketed September 21, 2009, Johnson Utilities requested an additional extension of the  
27 compliance deadline for filing the APP for the Copper Basin WRP. The Company explained that  
28 due to the market slowdown, construction of the Copper Basin WRP would not be needed for  
over five years. The Company further stated that ADEQ requires that construction commence

<sup>2</sup> Decision 70411 at page 12, lines 17-19.

1 within one year of the issuance of an APP, and that it would not be in the best interest of the  
2 Company to finish the process of obtaining the APP when construction of the Copper Basin WRP  
3 would not begin before the permit would expire. The Company requested that the filing  
4 requirement regarding the Copper Basin WRP be removed as a compliance item, in accordance  
5 with A.R.S. §40-252.

6 Because the September 15, 2009, letter referenced A.R.S. §40-252, Staff did not respond  
7 to the request, but instead, proceeded under the belief that it was incumbent upon the Commission  
8 to first decide whether to reopen and amend Decision 68235. Similarly, having submitted the  
9 written request to Staff, the Company assumed that Staff would respond to the request in the  
10 docket. As a result, the request to amend Decision 68235 simply fell between the cracks and has  
11 never been addressed. Given the passage of time since the request, the Company determined that  
12 the best approach would be to file this renewed petition to amend Decision 68235.

13 **RELIEF REQUESTED**

14 The water distribution infrastructure and sewer collection infrastructure has been installed  
15 to serve the Quail Run development, but no homes have been constructed as of this date, although  
16 the Company is currently providing water service through one landscape meter. Johnson Utilities'  
17 existing sewer system has been designed and constructed so that wastewater flows coming from  
18 the Quail Run development can be properly treated at the Company's Section 11 wastewater  
19 treatment plant until such time as the Copper Basin WRP is needed. With the exception of filing  
20 the APP for the Copper Basin WRP, Johnson Utilities has fully complied with all of the other  
21 conditions of Decision 68235.<sup>3</sup> The severe economic downturn that has battered the Arizona real  
22 estate market has persisted and delayed the start of many planned residential developments,  
23 including Quail Run. As a result, the Copper Basin WRP will not be needed for over five years.  
24 For all of these reasons, Johnson Utilities requests that the Commission amend Decision 68235  
25 by removing the condition that the Company file a copy of the APP for the Copper Basin WRP.  
26 Because water and sewer infrastructure have already been installed to serve the Quail Run

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28 <sup>3</sup> Decision 71713 (June 3, 2010) in this docket acknowledges that "Johnson [Utilities] has filed  
and Staff has confirmed all of the required compliance filings of Decision No. 68235.

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1 development, the public interest will be served by vesting the CC&N granted in Decision 68235.  
2 Alternatively, Johnson Utilities requests that the Commission extend the deadline for filing a  
3 copy of the APP for the Copper Basin WRP until no earlier than December 31, 2016.

4 **NOTICE OF SUBSTITUTION OF COUNSEL**

5 Notice is hereby given that Johnson Utilities has changed its legal counsel in this docket,  
6 and future communications, pleadings, procedural orders and other filings in this docket should  
7 be addressed as follows:

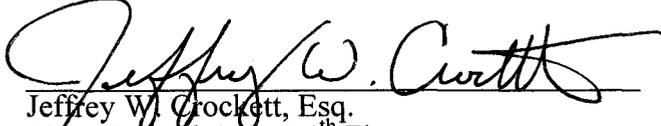
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15 With a copy to:

16 George H. Johnson [johnsongh@qwest.net](mailto:johnsongh@qwest.net)  
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22 RESPECTFULLY submitted this 23rd day of June, 2011.

23 BROWNSTEIN HYATT FARBER SCHRECK,  
24 LLP

25   
26 Jeffrey W. Crockett, Esq.  
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Attorneys for Johnson Utilities, L.L.C.

29 ORIGINAL and thirteen (13) copies filed  
30 this 23rd day of June, 2011, with:

31 Docket Control  
32 ARIZONA CORPORATION COMMISSION  
33 1200 West Washington Street  
34 Phoenix, Arizona 85007

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1 Copy of the foregoing hand-delivered  
2 this 23rd day of June, 2011, to:

3 Lyn A. Farmer, Chief Administrative Law Judge  
4 Hearing Division  
5 ARIZONA CORPORATION COMMISSION  
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7 Phoenix, Arizona 85007

8 Janice Alward, Chief Counsel  
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13 Steve Olea, Director  
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18 Copy of the foregoing sent via first class  
19 mail this 23rd day of June, 2011, to:

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