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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
ROBERT BURNS
SUSAN BITTER SMITH

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AZ CORP COMMISSION
DOCKET CONTROL

2013 APR 19 PM 3 21

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

**SWING FIRST GOLF LLC
RESPONSE TO PETITION TO AMEND DECISION**

Swing First Golf LLC ("Swing First") hereby responds to the "Petition to Amend Decision No. 71854, Pursuant to A.R.S. § 40-252" filed on March 8, 2013, by Johnson Utilities, LLC ("Johnson Utilities"). Swing First has no issues with the Commission's Policy Statement on Income Tax Expense for Tax Pass-Through Entities), which is codified in Decision 73739. However, Johnson Utilities' request should not be considered until Johnson Utilities is in full compliance with the Arizona Department of Environmental Quality ("ADEQ") and resolves its outrageous customer service issues with Swing First.¹ Talk is cheap; Johnson Utilities has previously promised the Commission that it will resolve its issues with Swing First.² Because Johnson Utilities' word is meaningless, it needs to provide concrete evidence that it can act as a responsible corporate citizen before the Commission provides Johnson Utilities a further rate increase.

Arizona Corporation Commission
DOCKETED

APR 19 2013

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¹ This would include closing all open Notices of Violation at ADEQ, satisfying the judgment in Maricopa County Superior Court Docket No. CV2008-000141, and resolving all issues in Commission Docket No. WS-02987A-13-0053.

² See Section III, below.

I AN ADDITIONAL RATE INCREASE IS NOT APPROPRIATE UNTIL UTILITY DEMONSTRATES A CHANGED ATTITUDE TOWARD THE ENVIRONMENT,

1 George H. Johnson is Johnson Utilities’ majority owner and is Johnson Utilities’ ultimate
2 decision maker.³ George Johnson also controls several other companies that have been in the
3 headlines in recent years, including Johnson International, Inc. (“Johnson International”); and
4 General Hunt Properties, Inc. (“General Hunt”).⁴

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

- 11 • Bulldozing and clearing nearly 270 acres of State Trust Lands located in and near the
12 Ironwood National Monument and the Los Robles Archeological District;
- 13 • Bulldozing and clearing an estimated 2,000 acres of private lands in the Santa Cruz
14 River Valley without obtaining permits required by state law;
- 15 • Destroying portions of seven major Hohokam archeological sites, circa A.D. 750-
16 1250;
- 17 • Destroying more than 40,000 protected native plants on State Trust Lands, including
18 Saguaro, Ironwood, Mesquite, Palo Verde and other protected species;
- 19 • Violating the state’s clean water laws by failing to secure required permits and
20 discharging pollutants into the Little Colorado River, the South Fork of the Little
21 Colorado River and tributaries of the Santa Cruz River; and

³ Ex. SF-1; Tr. at 59:14-23. Unless otherwise indicated, all references are to the record in Docket No. WS-02987A-08-0180.

⁴ See Commission’s corporate records; Tr. at 58:12-19.

⁵ This paragraph, see generally Ex. SF-40 at 3-4. A copy of the ADEQ press release is attached as Exhibit SSR-2 to Ex. SF-40. Johnson Utilities did not dispute the accuracy of the ADEQ press release. Tr. at 454:6 – 457:10.

- 1 • Negligently causing a disease epidemic that resulted in the death of at least 21 rare
2 Arizona desert bighorn sheep and serious injury to numerous others.

3 George Johnson and the other defendants ultimately agreed to pay a fine of 12.1 million dollars
4 — the largest civil environmental settlement in Arizona history — to settle these charges.⁶

5 In a related case, the United States Environmental Protection Agency (“EPA”) sued
6 George Johnson, his companies, and his contractor for bulldozing, filling, and diverting
7 approximately five miles of the Santa Cruz River.⁷ In October 2008, George Johnson and the
8 other defendants agreed to pay a fine of \$1.25 million, the largest penalty in the history of EPA’s
9 Pacific Southwest Region, and one of the largest in EPA’s history under Section 404 of the
10 Clean Water Act.

11 The same George H. Johnson that has been subject to some of Arizona’s largest
12 environmental fines is also Johnson Utilities’ majority owner and Johnson Utilities’ ultimate
13 decision maker.⁸ As might be expected, George Johnson’s Johnson Utilities has also
14 consistently disregarded its environmental responsibilities.

15 The Arizona Department of Water Resources has had its issues with Johnson Utilities. In
16 2003, it fined Johnson Utilities \$90,000 for using far more groundwater than it was entitled to.⁹

17 ADEQ’s issues with Johnson Utilities also go back to at least 2003. In that year, ADEQ
18 fined Johnson Utilities \$80,000 for building and operating a water system without obtaining the
19 necessary permits.¹⁰ This followed a \$6,000 fine in 2001 for modifying a water treatment plant
20 without obtaining construction approvals.¹¹

⁶ Johnson Utilities may argue that it is significant that Mr. Johnson’s insurance company actually paid the fine and that the defendants admitted no liability. However, it is unlikely that a sophisticated insurance company would agree to pay a \$12.1 million fine — the largest in Arizona history — if it did not believe that a court would likely find liability and award significant damages.

⁷ This paragraph, see generally Ex. SF-40 at 5. A copy of the DOJ press release is attached as Exhibit SSR-4 to Ex. SF-40. Johnson Utilities did not dispute the accuracy of the DOJ press release. Tr. at 457:24 – 458:13.

⁸ Ex. SF-1; Tr. at 59:14-23.

⁹ Ex. SF-40 at SSR-3.

¹⁰ Ex. SF-45.

¹¹ Ex. SF-46.

1 Since 2003, ADEQ has issued Johnson Utilities an amazing 14 Notices of Violations
2 (“NOVs”) for various environmental infractions.¹² Seven of these NOVs are still open and
3 unresolved.¹³

4 Despite the previous records of both Mr. Johnson and his Johnson Utilities concerning
5 other environmental matters, Johnson Utilities amazingly claims that its unprecedented number
6 of NOVs result from “selective enforcement” by ADEQ.¹⁴

7 During the weekend of May 17 and 18, 2008, Johnson Utilities’ Pecan Water
8 Reclamation Plant had two sanitary sewer overflows (SSOs), with at least 10,000 gallons of
9 untreated raw sewage flowing through a spillway into Queen Creek.¹⁵ As a result, the Queen
10 Creek Wash was contaminated with E-coli bacteria. Johnson Utilities failed to notify ADEQ,
11 which only found out about the discharge because of e-mails from local residents. The discharge
12 allegedly occurred as a result of the failure of undersized sewage pumps.

13 The Arizona Department of Environmental Quality (“ADEQ”) issued NOV 97512 after it
14 evaluated the 2008 Pecan Plant discharges. This NOV has not yet been resolved. The 2008
15 discharges were only months after a December 2007 discharge from the same plant and were the
16 latest in a long series of environmental violations and sewage spills by Johnson Utilities.¹⁶

17 Johnson Utilities had barely finished contaminating the Queen Creek Wash, when a
18 surprise inspection by ADEQ on September 25, 2008, caught Johnson Utilities storing dangerous
19 sewage sludge on the site of one of Johnson Utilities’ waste disposal plants.¹⁷ The inspection
20 found a large six-foot-deep depression, where biosolids had been buried along with plastic and
21 concrete debris. When the inspectors walked onto this area, they were below grade and the
22 biosolids were covered with only a few inches of soil. They could see dried biosolids above
23 ground, but the biosolids below ground were “moist and very odorous.” Test borings found that

¹² Ex. SF-9; Tr. at 1025:22-24.

¹³ Tr. at 377:22 – 382:9 and see Exhibit A, hereto.

¹⁴ Tr. at 809:9-21.

¹⁵ Ex. SF-9, NOV 97512.

¹⁶ Ex. SF-9, NOV 92021.

¹⁷ This paragraph, Ex. SF-11

1 “The biosolids had a strong sewage odor and were black in color.” The surface area was very
2 unstable and in several locations, the surface collapsed under the weight of the inspectors,
3 dropping them several feet into the hidden biosolids.

4 ADEQ took the results of the inspection very seriously. In total, ADEQ has issued three
5 NOVs to Johnson Utilities concerning its dangerous, unauthorized burial of sewage sludge.¹⁸
6 Together, the three NOVS allege that Johnson Utilities was guilty of an amazing 17 statutory or
7 code violations.

8 The Commission is of course familiar with Johnson Utilities’ most recent NOV. On
9 October 9, 2012, ADEQ issued NOV No. 133837 concerning Johnson Utilities’ August 2102 e-
10 coli contamination of its water supply.¹⁹ On August 13, 2012, 25 of 60 water samples tested
11 positive for e-coli. A subsequent inspection found:

- 12 1) Cracks in the well slab at Johnson Ranch well 4;
- 13 2) An unlocked chlorinator structure at Hardison well;
- 14 3) An unused unsecure storage tank connected to the well at Ricky;
- 15 4) Cracks In the slab and a loose vent pipe at Oasis 3;
- 16 5) Compromised fencing and graffiti at San tan tank; and
- 17 6) Poor housekeeping and maintenance at Edward tank.

18 The NOV also alleges that Johnson Utilities failed to properly notify its customers of the
19 contamination and did not adhere to its Emergency Operations Plan. Because of the e-coli
20 contamination, customers were ultimately warned not to drink water delivered by Johnson
21 Utilities.

22 Johnson Utilities is not coming to the Commission with clean hands to ask for special
23 relief. Nor is Johnson Utilities showing any remorse for its past environmental violations. And
24 these are just the violations that were caught and documented. How many more have not been?
25 These NOVs are serious and until they are closed, it would send the wrong message to further

¹⁸ Ex. SF-9, NOVs 102722, 103357, and 103956.

¹⁹ See Exhibit A, attached.

1 amend Decision No. 71854. The Commission should not provide any further rate increases to
2 Johnson Utilities until all open NOV's at ADEQ have been closed.

3 **II JOHNSON UTILITIES SHOULD RESOLVE ALL OPEN ISSUES WITH SWING**
4 **FIRST BEFORE THE COMMISSION PROVIDES ADDITIONAL RATE**
5 **INCREASES**

6 Swing First has been Johnson Utilities' long-suffering customer since 2004. "Abusive"
7 is not too strong an adjective to describe Johnson Utilities' treatment of Swing First, and the
8 Utility's behavior has created incredible financial and operating hardships for Swing First that
9 continue in full force today. Swing First has now received two jury verdicts against Johnson
10 Utilities, despite the fact that it was JU itself, and not Swing First, that brought these legal action
11 against Swing First. Unfortunately, these jury verdicts have had no impact on Utility's behavior.
12 Because of Johnson Utilities' continuing breaches of its public-service obligations, Swing First
13 was forced to file a recent Commission Complaint against Johnson Utilities in Docket No. WS-
02987A-13-0053. For the convenience of the Commission, Swing First will repeat much of that
Complaint because it is relevant to whether Johnson Utilities should be provided extraordinary
rate relief in this docket.

14 **A Background**

15 **1 Swing First Buys a Golf Course**

16 In November 2004, Swing First purchased the Johnson Ranch Golf Club in Queen Creek,
17 Arizona. David Ashton is Swing First's managing member. Like any Arizona golf course,
18 Swing First's course requires large amounts of water to irrigate the grass and other vegetation.
19 Swing First also requires water to fill the golf-course lake located at Swing First's 18th-hole
20 fairway, which acts as a reservoir for the irrigation water. Among other things, Swing First
21 purchases water for the purposes of irrigating its golf course from Johnson Utilities.

22 Adequate, timely delivery of irrigation water is critical for Swing First's golf course.
23 Without water, the grass and other vegetation would rapidly die in the heat. No one could play
the course, and Swing First would eventually go out of business. The value of homes in the

1 Johnson Ranch subdivision would also drop, particularly those located directly on the golf
2 course.

3 **2 Swing First Irrigates with Effluent**

4 Swing First inherited a 1999 contract which provided Swing First the first right to irrigate
5 the Johnson Ranch Golf Courses with any effluent generated by Johnson Utilities within its
6 service territory (“Utilities Services Agreement”). The contract also gave Johnson Utilities the
7 right to deliver water from other sources (wells or CAP-water), but provided that, if Johnson
8 Utilities exercises this right it could not charge more than the Commission-approved effluent
9 rate. Although the Utilities Services Agreement was never formally assigned, both Swing First
10 and Johnson Utilities have treated it as applying to both the parties.

11 The Utilities Services Agreement has two key provisions as it applies to Swing First.
12 First, Swing First had a first right to treated effluent produced in Johnson Utilities’ service
13 territory. Second, if Johnson Utilities could or did not deliver treated effluent, it could instead
14 deliver CAP Water or other sources to Swing First, but the price was capped at the tariff rate for
15 treated effluent of \$0.62 per thousand gallons, plus taxes and other authorized charges.

16 Until March 2006, Johnson Utilities did not deliver effluent, but instead delivered raw
17 water from the Central Arizona Project Canal (“CAP Water”). This is water originally from the
18 Colorado River that can be treated and delivered for human consumption. Then, in March 2006,
19 Johnson Utilities completed its Santan Wastewater Treatment Plant and began delivering Class
20 A+ treated effluent (“Effluent”) from the plant to Swing First.

21 Effluent is wastewater that has been treated and purified, but cannot be used for human
22 consumption. It is also less expensive than CAP Water. Because it conserves water that could
23 otherwise be consumed by humans and is less expensive, Effluent is ideal for irrigating golf
24 courses and other green spaces.

25 Johnson Utilities generally delivered Effluent to Swing First in 2006, but at times still
26 delivered CAP Water. However, Johnson Utilities honored the Utilities Services Agreement and
27 charged the Effluent rate for these deliveries.

1 As will be discussed, in 2007 Johnson Utilities refused to deliver Effluent to Swing First.
2 However, thanks to the Commission, since January 2008, Swing First has satisfied all of its
3 irrigation requirements with low-cost, environmentally-preferable Effluent, except for two
4 occasions when Johnson Utilities claimed that the Effluent pipeline had broken.²⁰

5 **3 Swing First Agrees to Manage George Johnson's Oasis Golf Course**

6 In April 2006, Swing First agreed to manage a golf course owned by the Club at Oasis
7 L.L.C. ("the Oasis"). At that time, Johnson Utilities and the Oasis were under George Johnson's
8 common ownership and control.

9 Mr. Johnson said that for business purposes, it would be advantageous for him to not pay
10 cash to Swing First for the management services. Instead he proposed that Swing First be paid
11 with irrigation water credits provided by Johnson Utilities, an Oasis affiliate. Mr. Ashton would
12 have preferred that Swing First receive cash, but ultimately agreed that Johnson Utilities would
13 provide Swing First with a water credit of 150 million gallons per year in exchange for Swing
14 First managing the Oasis.

15 Mr. Ashton prepared a Management Agreement which outlined the scope of services that
16 Swing First would provide for Oasis and provided that Swing First would be paid by water
17 credits by Johnson Utilities. Mr. Ashton presented the agreement to Mr. Johnson for signatures.
18 Mr. Johnson said that he never signed such agreements but that his handshake would
19 demonstrate his acceptance. Mr. Ashton and Mr. Johnson shook hands and on May 1, 2006,
20 Swing First began providing management services for the Oasis in accordance with the Oasis
21 Management Agreement.

22 Swing First managed the Oasis for six months. Johnson Utilities then provided the
23 agreed-upon water credits for six consecutive months. Johnson Utilities would send Swing First
24 a bill, with the understanding that no payment was required. Swing First did not pay for any
25 irrigation water and the next-month's bill would show no past-due amount.

²⁰ Unfortunately, Johnson Utilities is once again threatening to withhold Effluent.

1 **4 Swing First Terminates the Oasis Management Agreement**

2 Ultimately, Mr. Johnson hired the Swing First employee that had been managing the
3 Oasis. Given this event, Mr. Ashton did not feel that Swing First could continue to provide any
4 value to the Oasis, so he discontinued the Oasis management relationship on November 16,
5 2006, retroactive to October 31, 2006.

6 **5 Johnson Utilities' Retaliates**

7 Almost immediately after Swing First stopped managing the Oasis golf course, Johnson
8 Utilities' billing practiced drastically changed:

- 9 a. Johnson Utilities changed Swing First's CAP Water and Effluent Account
10 Numbers;
- 11 b. On December 5, 2006, Johnson Utilities retroactively billed Swing First for both
12 CAP Water and Effluent sold before November 2006. Consistent with the Oasis
13 Management Agreement, this water had already been provided as a credit to pay for
14 Swing First's management services for the Oasis Golf Course.
- 15 c. Johnson Utilities' retroactive billing rates grossly exceeded the lawful tariff rates
16 for CAP Water and Effluent. Johnson Utilities' Commission approved tariffs allow it to
17 charge just \$0.62 per thousand gallons for Effluent and approximately \$0.827 per
18 thousand gallons for CAP Water. Johnson Utilities retroactively charged \$3.75 per
19 thousand gallons for CAP Water instead of the lawful rate of \$0.83 per thousand gallons.
20 Johnson Utilities subsequently further revised the effluent bills to charge \$0.83 per
21 thousand gallons for Effluent instead of the lawful rate of \$0.62 per thousand gallons.
22 On just one day, Johnson Utilities wrongly billed Swing First over \$100,000 for irrigation
23 water.
- 24 d. Johnson Utilities also began withholding Effluent and instead delivered more
25 expensive, less environmentally-desirable CAP Water. Johnson Utilities then delivered
26 almost no Effluent in 2007.

1 e. For irrigation water delivered after October 2006, Johnson Utilities also began
2 charging \$3.75 per thousand gallons for CAP Water instead of the lawful rate of
3 approximately \$0.83 per thousand gallons. Johnson Utilities also continued to charge
4 \$0.83 per thousand gallons for Effluent instead of the lawful rate of \$0.62 per thousand
5 gallons.

6 f. Johnson Utilities began charging minimum bills for both the CAP Water and
7 Effluent Accounts, even though Swing First no longer needed or desired CAP Water.

8 g. Johnson Utilities based its Effluent minimum bill on a 6-inch meter instead of the
9 installed 3-inch meter.

10 Swing First provided evidence in Court that these actions by Johnson Utilities were not
11 simply the result of incompetence, but were actually intentional. The testimony was that Mr.
12 Johnson had instructed an employee to change Swing First's rates and also ordered his
13 employees to stop delivering Effluent.

14 **6 2007 – Johnson Utilities Manufactures Huge Bills and Disconnects**
15 **Irrigation Service**

16 By grossly overcharging Swing First for CAP and Effluent, and by withholding lower-
17 cost Effluent, Johnson Utilities ran up a huge, phony past due balance on Swing First's CAP-
18 Water bills. With this as a pretext, in November 2007, Johnson Utilities disconnected all
19 irrigation service to the golf course, a death sentence for Swing First. Johnson Utilities claimed
20 that Swing First owed over \$100,000 in the new CAP-Water account, but in fact the jury found
21 that Johnson Utilities actually owed Swing First money. Johnson Utilities' disconnection also
22 violated virtually every requirement of R14-2-410 for service termination.

23 **7 Swing First Goes to the Commission**

24 To keep irrigation service going, Swing First filed an informal complaint with the
25 Commission. The Commission ordered Johnson Utilities to restore irrigation service and asked
26 the parties to work together to resolve their issues. On behalf of Swing First, Mr. Ashton
27 diligently tried to understand what had happened and to work out a fair resolution, but to no

1 avail. As a result, Swing First was forced to file a formal complaint with the Commission on
2 January 25, 2008, in Docket No. WS-02987A-08-0049.

3 **8 Johnson Utilities Retaliates Again**

4 On February 1, 2008, Johnson Utilities received a copy of Swing First's formal complaint
5 and immediately began flooding the golf course with huge effluent deliveries. Johnson Utilities
6 was blatantly retaliating against Swing First for exercising its lawful right to file its Corporation
7 Commission Complaint. An e-mail from Brian Tompsett, Johnson Utilities' executive vice
8 president, made this crystal clear:

9 You have now filed a formal complaint with the Arizona Corporation
10 Commission alleging, among other things, service interruptions. You even
11 requested relief asking that 'The Commission to order Johnson Utilities to
12 continue providing service during the pendency of this matter". We were served
13 with that complaint on Friday February 1, 2008. Now a mere 3 days later you now
14 demand that 'WE STOP THE DELIVERY OF WATER". **Which way do you**
15 **want it?**²¹

16 Johnson Utilities ignored Swing First's requests to stop delivering effluent and did not
17 stop until it had flooded much of the 18th-hole fairway. Complaint Exhibit A is a photograph
18 that shows the extent of the flooding.

19 Johnson Utilities did not stop there. It actually charged Swing First for all the Effluent
20 that flooded the golf course.

21 **9 Swing First Intervenes in Johnson Utilities' Rate Case**

22 In 2008, Johnson Utilities filed an application in Docket No. WS-02987A-08-0180 for a
23 huge rate increase. In order for the Commission to be able to evaluate Johnson Utilities' horrible
24 treatment to Swing First, along with many other customer service and environmental issues,
25 Swing First intervened in the rate case.

26 **10 Johnson Utilities Retaliates A Third Time**

27 On February 3, 2009, David Ashton filed written testimony on behalf of Swing First.
28 Among other things, this testimony discussed George Johnson's environmental record (including
29 his record fines), his improper billing, and how Johnson Utilities had mistreated Swing First.

²¹ *Id.* Emphasis in original.

1 Mr. Ashton also testified that Johnson Utilities should be subject to an independent financial
2 audit.

3 On February 9, 2009, just six days after Mr. Ashton filed his testimony at the
4 Commission, Johnson Utilities sent an outrageous letter, signed by Mr. Johnson, to multiple
5 members of Swing First Golf, LLC. First, George Johnson threatened to sue the members for
6 defamation if they did not proactively oppose Swing First's cases at the Commission. The letter
7 was clearly intended to intimidate Swing First members from supporting Swing First's
8 participation in the Corporation Commission case.

9 The letter also disparaged Mr. Ashton's character, challenged his management abilities,
10 and impugned his integrity.

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

17 Neither Mr. Johnson nor Johnson Utilities had any basis for the letter's defamatory
18 statements and inferences. The jury agreed and awarded Mr. Ashton damages for defamation.

19 It is clear that Mr. Johnson's purpose was to retaliate against Mr. Ashton for filing
20 testimony at the Commission. On February 3, 2009, Mr. Ashton recommended that Johnson
21 Utilities be subject to "independent management and financial audits." Just six days later, Mr.
22 Johnson threatened lawsuits against Swing First's members, defamed Mr. Ashton, and suggested
23 "that an outside independent management and financial audit be performed on SFG." Mr.
24 Johnson almost exactly copied Mr. Ashton's language. This was hardly a coincidence.

25 Johnson Utilities' blatant attempt to prevent Swing First from freely participating in
26 Johnson Utilities' rate case should be of particular concern to the Commission. Parties should be
27 free to file testimony and express their opinions in a Johnson Utilities rate case without fear of
28 lawsuits and character assassination.

1 **11 Johnson Utilities Sues Swing First**

2 In January 2008, Johnson Utilities sued Swing First in Superior Court to try to recover
3 the huge, phony balances on Swing First’s water bills. Johnson Utilities later amended its
4 complaint to claim that Mr. Ashton had defamed Johnson Utilities by talking with homeowners’
5 associations about possible overcharges on their irrigation bills. Fortunately, truth is a complete
6 defense against a defamation claim. Johnson Utilities actually had been charging the Santan
7 Heights HOA \$3.75 per thousand gallons for Effluent, more than six times the lawful rate of just
8 \$0.62 per thousand gallons. Only after it got caught, did Johnson Utilities provide almost
9 \$180,000 in credits to the HOA. And Johnson Utilities dismissed its defamation claim with
10 prejudice before the trial started.

11 **12 Swing First Counterclaims**

12 Swing First replied to the Court Complaint that Johnson Utilities actually owed Swing
13 First money. Swing First later added counts that Johnson Utilities had failed to pay for Swing
14 First’s management of the Oasis Golf Course and that Mr. Johnson and Johnson Utilities had
15 defamed Mr. Ashton.

16 **13 Swing First Gets Justice**

17 In two separate trials, juries found for Swing First. Swing First owes Johnson Utilities
18 nothing. Johnson Utilities owes Swing First \$54,600.00 for its management of the Oasis Golf
19 Course. Johnson Utilities owes Swing First \$41,883.11 for water overcharges. Finally, Johnson
20 Utilities and Mr. Johnson owe David Ashton \$20,000 for defamation. A final judgment,
21 including both verdicts, attorneys’ fees, and costs, is expected shortly. It’s important to note that
22 it took Swing First more than five years to get this justice and it had to defend itself, out of its
23 own pocket, against Johnson Utilities’ trumped up allegations.

24 **B Current Issues**

 Unfortunately several new issues still need to be resolved by the Commission.

1 1 **Johnson Utilities Is Again Threatening to Withhold Effluent**

2 As was discussed, in 2007, Johnson Utilities essentially refused to deliver treated effluent
3 and instead unilaterally delivered more expensive and less desirable CAP Water. Johnson
4 Utilities produced over 184 million gallons of treated effluent in 2007. Swing First's total
5 irrigation usage in 2007 was just 79 million gallons. Johnson Utilities could easily have supplied
6 all of Swing First's 2007 irrigation requirements with Effluent from the San Tan Wastewater
7 Treatment Plant. Yet, Johnson Utilities delivered fewer than 11 million gallons of Effluent in
8 2007. The rest was more expensive, less desirable CAP Water.

9 Johnson Utilities pumped most of the withheld Effluent into the ground. However,
10 Johnson Utilities also began selling a portion of the withheld Effluent to the Santan Heights
11 HOA. This created an unrealistic expectation by the HOA that Johnson Utilities had sufficient
12 Effluent to satisfy all the HOA's irrigation requirements. Unfortunately, when the Commission
13 forced Johnson Utilities to resume Effluent deliveries to Swing First in 2008, Johnson Utilities
14 no longer had sufficient Effluent for both customers.

15 Since 2007, Johnson Utilities has tried to maximize Effluent deliveries to the HOA by
16 rationing deliveries to Swing First. Through careful management, Swing First has been able to
17 irrigate the golf course solely with Effluent from 2008 to the present, but it has been a very close
18 call at times. Effluent is delivered into a small golf course lake on the 18th hole, Swing First's
19 signature hole. From there, Swing First pumps the effluent through its irrigation system.
20 Because of Johnson Utilities' imposed rationing, lake levels have often been reduced to critical
21 levels. At these low levels, fish are endangered, the lake begins to stink and lose its scenic
22 qualities, and the irrigation pumps suck up dirt and gravel, which damages equipment. Swing
23 First has complained to no avail.

24 Swing First asks the Commission to order Johnson Utilities to deliver Effluent to Swing
25 First in the quantities requested by Swing First. Only after satisfying Swing First's requirements
26 should Johnson Utilities be allowed to sell Effluent to any other customers or to pump Effluent
27 into the ground.

1 Swing First is aware the Johnson Utilities does not presently have sufficient Effluent to
2 satisfy both Swing First's irrigation requirements and those of the Santan HOA, or any other
3 effluent customers that it may decide to add. However, this is a problem that Johnson Utilities
4 created by deliberately withholding Effluent in 2007 from Swing First and instead selling it to
5 the Santan HOA (at six times the lawful rate). Johnson Utilities knew then that it did not have
6 enough Effluent for two large customers but still intentionally added the HOA as a customer.

7 Swing First is also aware that the Commission recently approved (Decision No. 73521) a
8 new irrigation tariff for Johnson Utilities that will allow it to sell well water at a loss to the HOA.
9 Johnson Utilities should not be allowed to offset those losses by continuing to ration Effluent
10 deliveries to Swing First.²² Swing First has paid enough in the previous complaint case, the rate
11 case, and the hugely expensive court case. Swing First should not also have to pay for the mess
12 that Johnson Utilities created with the HOA. Further, the situation will eventually resolve itself
13 as customer growth continues and Effluent production increases.

14 **2 Johnson Utilities Continues to Overcharge for Monthly Minimum**
15 **Bills**

16 Johnson Utilities is authorized to charge its irrigation customers each month a so-called
17 minimum bill based on the size of the installed meter. This is a so-called minimum bill because
18 it is actually charged on top of all other charges on the bill, even if those charges exceed the
19 "minimum" bill.

20 To meter Effluent service, after the effluent line to the lake was completed, Johnson
21 Utilities installed and Swing First paid for a three-inch water meter. However, for much of 2006
22 and 2007, Johnson Utilities billed Swing First a minimum bill of \$900 per month as if service
23 was being provided through a six-inch meter. Then, in January 2008, Johnson Utilities
24 arbitrarily replaced Swing First's three-inch effluent meter with an eight-inch meter, claiming

²² Swing First notes the discussion in Decision No. 73521(page 3) concerning "an 18-hole golf course which currently receives treated effluent from the Company's San Tan wastewater treatment plant) which the Company expects may be interested in the new service." This was a blatant misrepresentation by Johnson Utilities. Swing First only wants to receive the Effluent that it was promised in 2004. To be perfectly clear, Swing First has had no interest in receiving CAP Water and has absolutely no interest in Johnson Utilities' new tariff.

1 that the change was needed to correct previously undisclosed delivery line problems. Before
2 2008, Swing First had never had any service interruptions because of delivery line issues. But
3 within months after Johnson Utilities installed the new eight-inch meter Swing First was
4 victimized by two alleged line breaks, one at the peak of summer demand and the other at
5 exactly the time Swing First required large irrigation deliveries to facilitate over-seeding. It is
6 possible that the timing of the “outages” was just a coincidence. But it is clear that the new
7 meter did not correct any line problems.

8 Since 2007, Johnson Utilities has generally billed Swing First a minimum bill based on a
9 six-inch meter, but has recently begun charging Swing First an \$880 per month minimum bills
10 based on an eight-inch meter. According to Johnson Utilities, this has been happening for nearly
11 two years. In the fall of 2012, Johnson Utilities replaced the existing eight-inch meter because of
12 alleged continuing delivery issues.

13 Concerning minimum bills before the date of the 2013 Complaint, Swing First has been
14 compensated by the jury for minimum bill overcharges. Swing First has also paid all minimum
15 bills when due. Beginning now, Swing First will pay Johnson Utilities for only a three inch
16 meter. And going forward, Swing First asks the Commission to order Johnson Utilities to
17 resume basing its minimum bills on the three-inch meter that was originally installed. This meter
18 was selected and installed by Johnson Utilities and no one alleges that it did not accurately read
19 deliveries to Swing First. Johnson Utilities should be held to its initial meter choice. Otherwise,
20 there would be too much temptation for Johnson Utilities to increase a customer’s “minimum”
21 bill by simply installing a larger meter and claiming that it was needed for system reasons. A
22 customer should not be at risk for a meter bait and switch. Further, requiring Johnson Utilities to
23 abide with its initial meter choice also provides the proper incentive for Johnson Utilities to
24 realistically size its meters in the first place.

25 **3 Johnson Utilities Has Not Been Sending Water Bills**

26 R14-2-409(A)(1) requires “Each utility shall bill monthly for services rendered. Meter
27 readings shall be scheduled for periods of not less than 25 days or more than 35 days.” Johnson

1 Utilities has regularly ignored this rule and not sent bills to Swing First. It is now back to its old
2 bad ways.

3 Complaint Exhibit B is a copy of Johnson Utilities' February 25, 2013, Effluent bill to
4 Swing First. Incredibly, despite being directly in the midst of litigation with Swing First, from
5 August 2012 until February 2013 Johnson Utilities did not even bill Swing First for Effluent
6 deliveries, in complete disregard of R14-2-409.A.1. Now, as can be seen, Johnson Utilities has
7 sent Swing First a retroactive bill for more than \$38,000.

8 Johnson Utilities is a repeat offender and it is time for the Commission to send a clear
9 message that it is not free to disregard explicit Commission regulations. In the 2013 Complaint,
10 Swing First asks the Commission to sanction Johnson Utilities by relieving Swing First of
11 paying all but the current charges on the February 25, 2013, bill.

12 **4 Johnson Utilities Again Flooded the Golf Course**

13 Swing First was the victim of a second flooding last fall. These incidents just should not
14 happen. Fortunately, Mr. Watkins, Johnson Utilities' field office manager did provide a billing
15 credit for the flooding.

16 **III THE COMMISSION CANNOT RELY ON ANY MORE PROMISES FROM 17 JOHNSON UTILITIES**

18 The Commission cannot rely on any more promises from Johnson Utilities. At its
19 September 6, 2011, Open Meeting, the Commission was considering whether to amend Decision
20 No. 71854 to provide Johnson Utilities a substantial revenue increase. At the Open Meeting, the
21 Commissioners were clearly concerned about the never-ending litigation by Johnson Utilities
22 against Swing First and the unresolved Commission issues. In response to Commissioner
23 questioning, George Johnson promised the Commission that he would negotiate in good faith to
24 resolve the Superior Court case.

25 **Commissioner Newman** (To Mr. Johnson): So, I am asking for a show of
26 good faith with regard to these negotiations a little bit better than calling your
colleague, who's seeking a legal remedy a blackmailer. I am asking you not your
lawyer, your lawyer would probably give me this answer, this is pretty important.

1 **George Johnson:** You know, I'm just a home-town boy. We try to do our
2 best, and I'm calling it like it is, and I'm sorry sir.

3 **Commissioner Newman:** No, no, no, no, are you willing to negotiate in good
4 faith, even prior to going to Superior Court, so not run up a huge bill in Superior
5 Court as well? ... George, I'm not trying to play, I'm trying to have a real
6 conversation.

7 **George Johnson:** We will start working with them on a separate basis that
8 has nothing to do with this rate case. I give you my word, as George Johnson, I
9 will do everything possible to settle this and maybe settle it a little bit to their
10 favor, but I don't want it to be part of this hearing; I don't think it's fair. But I
11 will sit down with them, I give you my word, I'll meet with them every day to get
12 it resolved.

13 **Commissioner Newman:** Thank you, that's what I was looking for.²³

14 Johnson Utilities did not even pretend to keep this promise. The Open Meeting was on
15 September 6, 2011. George Johnson never met with Swing First. Daniel Hodges never met with
16 Swing First. Swing First never received a meaningful settlement offer. Instead, Swing First was
17 forced to litigate the Superior Court case to the end, at enormous expense. So, the Commission
18 should give no credence to any further promises by George Johnson or Johnson Utilities. The
19 Commission has the tools to enforce their behavior and it is time to use them.

20 **IV CONCLUSION**

21 In return for being allowed to operate legally as a monopoly, a utility takes on certain
22 important obligations when it is awarded a CC&N. Among other things, a utility subjects itself
23 to rate regulation by the Commission, and takes on the mantle of a "public service
24 corporation."²⁴ But Johnson Utilities has pushed its monopoly status to and beyond the legal
25 limit, has disregarded its requirement to charge lawful rates, and flouted its public-service
26 obligations.

27 In Decision No. 71854, the Commission sent a strong message concerning Johnson
28 Utilities' blatant disregard for its regulators, its customers, the public safety, the environment,
and its public-service obligations. Certainly, Johnson Utilities has done nothing to show that it

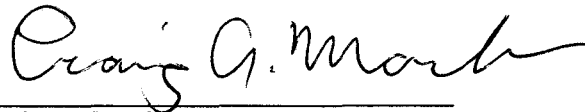
²³ Audio recording of September 6, 2011, Open Meeting at 1:27:59. Emphasis added

²⁴ Const. Art 15, §2.

1 has altered or even regrets its behavior since the Decision. George Johnson still controls and
2 directs Johnson Utilities and continues to battle both ADEQ and Swing First, one of Johnson
3 Utilities' largest customers.

4 Johnson Utilities cannot continue its efforts to bankrupt Swing First Golf. Only the
5 Commission can make the abuse stop. Johnson Utilities cannot continue to thumb its nose at
6 ADEQ. Therefore, until such time as Johnson Utilities has resolved its long-running, multiple
7 environmental issues, and resolved all open issues with Swing First, the Commission should not
8 provide Johnson Utilities any additional rate increases.

9 RESPECTFULLY SUBMITTED on April 19, 2013.

10
11 
12

13
14

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17 10645 N. Tatum Blvd.
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Original and 13 copies filed
on April 19, 2013, with:

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Copies mailed and e-mailed
on April 19, 2013, to:

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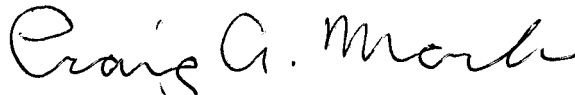
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By:



Craig A. Marks



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov

Exhibit A



Henry R. Darwin
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 133837

October 9, 2012

Johnson Utilities, LLC
Attention: Ken Watkins
5230 E Shea Blvd
Scottsdale, AZ 85254-5750

Subject: Johnson Utilities, Place ID 18613
968 E Hunt Hwy / Queen Creek, AZ 85143-7450

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Johnson Utilities, LLC as the owner/operator of Johnson Utilities has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on August 24, 2012.

I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. **A.A.C. R18-4-119 / 40 CFR § 141.202(b)(3)**

Failure to comply with any additional public notification requirements (including any repeat notices or direction on the duration of the posted notices) that are established as a result of the consultation with ADEQ, for a violation or situation that requires Tier 1 public notice.

At the time of a Tier 1 Public Notice event Johnson Utilities:

- 1) failed to make an effort properly notify the media as described in their emergency plan;
- 2) failed to follow up the Public Notice to keep the public aware of the water quality progress;

2. **40 CFR § 141.63(a)(1) / A.A.C. R18-4-109**

For a system which collects at least 40 samples per month, distribution of water in which more than 5% of the samples collected during the month tested total Coliform-positive.

Twenty five samples collected on August 13, 2012 were analyzed as positive for the presence of total Coliform bacteria of the 60 samples required each per month.

3. **40 CFR § 141.63(b) / A.A.C. R18-4-109**

Failure to comply with the MCL for total coli forms; a total Coliform repeat sample tested positive following a fecal Coliform-positive or E.coli-positive routine sample.

Southern Regional Office
400 West Congress Street Suite 433 Tucson, AZ 85701
(520) 628-6733

Printed on recycled paper

Three of the 25 total Coliform positive samples collected on August 13, 2012, tested positive for the presence of E. coli bacteria.

4. **40 CFR § C 141.202(c) / A.A.C. R18-4-119**

Failure of a public water system to deliver a Tier 1 Public Notice in a manner designed to reach all customers served by the water system using at a minimum at least one of the forms of delivery identified in this Section.

Johnson Utilities did not distribute the public notice for the Total Coliform MCL Exceedences in a manner reasonably calculated to reach all customers served.

1) Johnson Utilities did not adhere to their ADEQ approved emergency operation plan to notify the media.

2) Johnson Utilities contacted a local school district but did not issue a Public Notice.

3) Johnson Utilities sent ADEQ evidence that the media was contacted through a subcontractor, not the responsible party. There was no reference to a Public Notice in the email that was sent and there was no follow-up contact information offered.

5. **A.A.C. R18-4-204(C)**

Failure of a community water system to implement the Emergency Operations Plan in the event of an emergency situation

The water system did not implement the Emergency Operations Plan in response to positive coliform and E.coli samples, an emergency situation that occurred on August 21, 2012

6. **40 CFR § C 141.31(d) / A.A.C. R18-4-106**

Failure of a public water system to submit to the Department a certification that it has fully complied with the public notification requirements and copies of each type of notice that was distributed within ten days of completing the public notification requirements.

On August The Certification were dated September 7, 2012 and September 17, 2012, which was after 10-day requirement.

7. **40 CFR § C 141.205 / A.A.C. R18-4-119**

Failure of a public water system to provide a public notice including the minimum elements required under this Section.

The notices transmitted to the school district and the media did not meet the Public Notice content requirements.

II. LEGAL AUTHORITY and NATURE OF OTHER ALLEGED VIOLATION(S)

1. **A.A.C. R18-4-203**

Failure of a water supplier to maintain and keep in proper operating condition all

facilities used in production, treatment, and distribution of the water supply

At the time of the inspection ADEQ staff observed:

- 1) Cracks in the well slab at Johnson Ranch well 4;
- 2) An unlocked chlorinator structure at Hardison well;
- 3) and unused unsecure storage tank connected to the well at Ricky;
- 4) Cracks in the slab and a loose vent pipe at Oasis 3;
- 5) Compromised fencing and graffiti at San tan tank;
- 6) Poor housekeeping and maintenance at Edward tank.

These items have been corrected per the photo documentation that was received September 21, 2012. No further action is required for this part of the violation.

III. DOCUMENTING COMPLIANCE

1. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or documentation to demonstrate the corrective actions that have been taken to ensure that future public notices are issued in a form and manner that is reasonably calculated to reach all persons served within the required time period.
2. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or documentation to demonstrate the corrective actions that have been taken to ensure that certification of Public Notice method of delivery and confirmation of delivery are submitted to ADEQ within 10 calendar days from the date of the initial Public Notice and any repeat notice.
3. Within 90 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or documentation to show that refresher sampling training has been provided for all current and potential sampling personnel.
4. Within 90 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a description of the sampling protocols and policies for all sampling procedures administered by Johnson Utilities.
5. Within 45 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or revisions to the emergency plan with particular attention to describing the procedures and actions the water system provides for the users.

The emergency operations plan shall detail the steps that the community water system will take to assure continuation of service in the following emergency situations:

1. Loss of a source;

2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;
5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. A break in a transmission or distribution line; and
7. Chemical or microbiological contamination of the water supply.

The emergency operations plan required by subsection (A) shall address all of the following:

1. Provision of alternate sources of water during the emergency;
2. Notice procedures for regulatory agencies, news media, and users;
3. Disinfection and testing of the distribution system once service is restored;
4. Identification of critical system components that shall remain in service or be returned to service quickly;
5. Critical spare parts inventory; and
6. Staff training in emergency response procedures.

For guidance please refer to:

http://water.epa.gov/lawsregs/rulesregs/sdwa/publicnotification/upload/2007_04_26_publicnotification_guide_publicnotification_pnhandbook.pdf

6. Within 45 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or responsibility and training chart for emergency response team (may be included in emergency plan) to include:
 1. Duties required for each position
 2. Training and refresher training
 3. Practice drills, communications or broadcast tests
 4. Tail-gate safety meetings (scheduled and non-scheduled)
7. Within 60 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or certification that the corrective actions that have been taken to ensure that the emergency plan will be implemented, as written and approved by ADEQ, in the event of an emergency. Additional measures may be implemented to supplement, not replace the approved elements.

IV. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Deborah L. Schadewald-Kohler, Water Quality Utility Field Service Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

V. STATEMENT OF CONSEQUENCES

Significant Violations

1. The time frames within this Notice for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice are firm limits. Failure to achieve or document compliance for the violation(s) alleged in Section I of this Notice within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in Section I of this Notice as allowed by law.

Other Violations

3. ADEQ may take any enforcement action authorized by law for the violation(s) alleged in Section II of this Notice, if the violation(s) are not corrected, or if ADEQ determines that the violation(s) have not been corrected in the time frames within this Notice.

VI. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Deborah L. Schadewald-Kohler at (602) 771-2225.



Daniel L. Czecholinski, Manager
Water Quality Utility Field Service Unit



Deborah L. Schadewald-Kohler
Water Quality Utility Field Service Unit