

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman  
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BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

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2013 MAY 17 P 4:00 Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION  
DOCKET CONTROL MAY 17 2013

DOCKETED BY [Signature]

IN THE MATTER OF THE FORMAL  
COMPLAINT OF SWING FIRST GOLF LLC  
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-13-0053

THIRD SUPPLEMENT TO  
COMPLAINT

1 Swing First Golf LLC ("Swing First") hereby supplements a third time its Complaint  
2 against Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"). Utility continues to  
3 withhold Effluent from Swing First.

4 I **The Mystery Deepens: Where Did the Effluent Go?**

5 There are only two current Effluent customers capable of receiving Effluent from  
6 Utility's Santan Wastewater Treatment Plant: Swing First and the San Tan Village Homeowners  
7 Association.<sup>1</sup> Beginning on Sunday May 12 and continuing through the morning of Monday  
8 May 13, Utility delivered untreated effluent to the HOA, which may have contained fecal matter.  
9 Fish died in the HOA lake and residents had to suffer the stench of the untreated effluent. Utility  
10 was then forced to drain and disinfect the HOA lake.

11 Exhibit A is a copy of Utility's May 15, 2013, press release. There are two important  
12 facts in the press release:

- 13 1. The Santan WWTP is fully operational: "The incident began with a partial power  
14 failure that has now been remedied."

<sup>1</sup> Swing First is informed and believes that Utility is selling Effluent in the winter months to a farmer for field irrigation. The field is currently not being cultivated.

1 2. Utility is not delivering Effluent to the HOA: “Johnson is now completely emptying  
2 the pond. They will then remain empty until scheduled repairs by the San Tan  
3 Heights HOA are completed.”

4 Based on these facts, Utility should have been able to deliver all available Effluent to  
5 Swing First, but it did not. The following table compares deliveries this week to the WWTP’s  
6 normal average production of 800,000 gallons per day:

<u>Date</u>	<u>Deliveries</u>	<u>Average Production</u>	<u>Undelivered Effluent</u>
May 12	271,000 gallons	800,0000 gallons	529,000 gallons
May 13	278,000 gallons	800,0000 gallons	522,000 gallons
May 14	0	800,0000 gallons	800,000 gallons
May 15	350,000 gallons	800,0000 gallons	450,000 gallons
May 16	265,000 gallons	800,0000 gallons	535,000 gallons
May 17	464,000 gallons	800,0000 gallons	336,000 gallons
<b>Total May 12 - 17</b>	<b>1,628,000 gallons</b>	<b>4,800,000 gallons</b>	<b>3,172,000 gallons</b>

7 So, this week approximately 3,000,000 gallons of Effluent appear to have already gone missing.  
8 Where did this Effluent go?

9 **II Undelivered Effluent is Pumped Into the Ground**

10 Utility pumps all unsold Effluent into the ground for recharge into the aquifer: “If we  
11 don't sell it to the customer, we then recharge and it goes back into the ground.”<sup>2</sup> This leads to a  
12 further question: Why would Utility pump Effluent into the ground rather than sell it to Swing  
13 First?

14 **III Why Would Utility Pump Water into the Ground Rather than Sell It?**

15 Without further discovery, this question cannot be answered with certainty, but the likely  
16 answer is that Utility can make far more money pumping Effluent into the ground than it would  
17 selling it to its customers.

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<sup>2</sup> Testimony of Brian Tompsett, trial transcript dated March 13, 2012, at 200.

1 Based on Utility's May 3 e-mail to Swing First, Utility must pay the Central Arizona  
2 Groundwater Replenishment District \$1.51 for every thousand gallons it pumps out of the  
3 aquifer.<sup>3</sup> However, a company can instead use credits to offset groundwater pumping charges,  
4 gallon for gallon. One common way to do this is to pump treated effluent into a recharge basin,  
5 where it eventually returns to the aquifer. Normally, each gallon recharged allows the company  
6 to withdraw ("pump out") one gallon of groundwater at no charge and this can be anywhere in  
7 the service territory.<sup>4</sup>

8 So, assuming that Utility is managing its water supplies like most companies, Utility will  
9 make \$1.51 per thousand gallons for Effluent that it pumps into the ground. This is because  
10 Utility will not have to pay \$1.51 per thousand gallons for groundwater that it pumps out of its  
11 wells. So, Utility appears to have two choices: it can sell Effluent to Swing First (or the HOA)  
12 for \$0.63 per thousand gallons, or it can make 2.5 times as much, earning \$1.51 per thousand  
13 gallons just by pumping the Effluent into the ground.

14 A public service corporation that takes its public-service obligation seriously would not  
15 take advantage of its customers in order to maximize its profits. But, based on Utility's track  
16 record, the Commission should examine, as part of this Complaint case, whether Utility is  
17 profiting at the expense of Swing First.

18 **IV Is Utility Billing the HOA for Phantom CAGR D Charges?**

19 In Decision No. 71352, dated October 4, 2012, the Commission approved Utility's new  
20 non-potable water tariff for the HOA. The tariff requires the HOA to pay two charges: a base  
21 charge of \$0.84 per thousand gallons and the CAGR D tax component of \$1.51 per thousand  
22 gallons. Through the CAGR D component, the HOA is expected to compensate Utility for the  
23 charge assessed by the CAGR D.

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<sup>3</sup> The e-mail was attached as Exhibit A to Swing First's May 8, 2013, Supplement to Complaint.

<sup>4</sup> In this case, within the Phoenix Active Management Area.

1 A fair question then arises: If Utility's Effluent recharging is generating CAGR D credits  
2 to offset groundwater pumping, then why should the HOA be required to pay the CAGR D tax  
3 component of the tariff?

4 **V Conclusion**

5 Utility is clearly continuing to withhold Effluent deliveries from Swing First. And, as  
6 Swing First has demonstrated in previous pleadings, this is a 2013 issue. Swing First desperately  
7 needs the Commission to order Utility to resume effluent deliveries to at the levels it received in  
8 2011 and 2012.

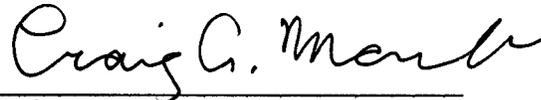
9 To Swing First, it does not matter a great deal whether Utility is motivated by ill-will or  
10 by the opportunity to profit at Swing First's expense, or both. Swing First just needs Effluent for  
11 irrigation and to maintain lake levels.

12 However, the Commission may rightly be concerned if Utility is deliberately withholding  
13 Effluent from Swing First in order to maximize profits at Swing First's expense. If this is the  
14 case, the Commission may well want to force Utility to disgorge any ill-gotten profits.

15 If Utility is also manipulating irrigation alternatives to force the HOA to take very high-  
16 cost non-potable water service, this would not be Swing First's issue. However, the Commission  
17 may well want to investigate this issue as part of this proceeding.

18 The bottom line is that Swing First needs immediate relief – a Commission Order  
19 requiring Utility to resume Swing First's Effluent deliveries to at least at the levels provided in  
20 2011 and 2012. Then, the Complaint proceeding can proceed at the pace required for a thorough  
21 investigation of Swing First's allegations. If the Commission desires, it could also investigate  
22 irrigation deliveries to the HOA.

1 RESPECTFULLY SUBMITTED on May 17, 2013.  
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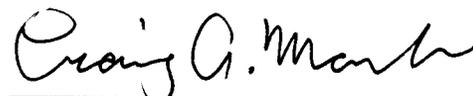
15 Original and 13 copies **filed**  
16 on May 17, 2013, with:

17  
18 Docket Control  
19 Arizona Corporation Commission  
20 1200 West Washington  
21 Phoenix, Arizona 85007  
22

23 Copy **e-mailed and mailed**  
24 on May 17, 2013 to:

25  
26 Jeffery W. Crockett  
27 Brownstein Hyatt Farber Schreck  
28 One East Washington Street  
29 Suite 2400  
30 Phoenix, AZ 85004  
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32  
33  
34 By:

35   
Craig A. Marks

## Exhibit A

For Immediate Release  
May 15, 2013

Johnson Utilities continues its work to address a turbidity incident at its San Tan wastewater facility this week. The incident was the source of an unpleasant, but harmless, odor and considerable public interest. The incident began with a partial power failure that has now been remedied. It was erroneously reported that untreated sewage was discharged into the San Tan Homeowners Association pond.

As reported to ADEQ, Johnson Utilities responded to the incident by halting discharge of effluent to the lake and removing the water for reprocessing through the WRP. Johnson is now completely emptying the pond. They will then remain empty until scheduled repairs by the San Tan Heights HOA are completed. The HOA is making changes to the piping connecting their two ponds. Because this work was planned before the turbidity event this week, it has allowed the HOA to take advantage of the drained pond.

The HOA ponds are used for storage of Class A + effluent for irrigation purposes only. There is no connection between the ponds and any drinking water delivery system. Johnson Utilities' only source of drinking water is groundwater.

Earlier today, ADEQ inspected the HOA ponds, the San Tan water reclamation plant (WRP), the only lift station serving the WRP, and a grease interceptor. The lift station was found to be in compliance. The inspection of the grease interceptor showed that it had been pumped and was in good operating condition. Johnson Utilities conducts an annual inspection of grease interceptors to ensure grease is kept out of the sewer system. ADEQ agreed that the heavy sediment that had been exposed today on the bottom of the pond is normal lake sediment caused over the years of runoff, animal waste, dust, and many other sources. This sediment will contain animal fecal material and chemicals from storm water runoff. ADEQ also inspected agency and on-site records, reporting no issues.