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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

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- 3 BOB STUMP, Chairman
- 4 GARY PIERCE
- 4 BRENDA BURNS
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AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

6 IN THE MATTER OF THE APPLICATION OF
 7 JOHNSON UTILITIES, LLC., DBA JOHNSON
 7 UTILITIES COMPANY FOR APPROVAL OF
 8 SALE AND TRANSFER OF ASSETS AND
 8 CONDITIONAL CANCELLATION OF ITS
 9 CERTIFICATE OF CONVENIENCE AND
 9 NECESSITY.

DOCKET NO. WS-02987A-13-0477

**STAFF'S NOTICE OF FILING
DIRECT TESTIMONY**

10 The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission")
 11 hereby files the Direct Testimony of Staff witness Bob Gray in the above-captioned matter.

12 RESPECTFULLY SUBMITTED this 9th day of May, 2014.

14 Robin R. Mitchell, Attorney
 15 Brian E. Smith, Attorney
 15 Legal Division
 16 Arizona Corporation Commission
 16 1200 W. Washington St.
 17 Phoenix, AZ 85007
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19 Original and thirteen (13) copies
 20 of the foregoing were filed this
 20 9th day of May, 2014 with:

21 Docket Control
 22 Arizona Corporation Commission
 22 1200 West Washington Street
 23 Phoenix, Arizona 85008

Arizona Corporation Commission
DOCKETED

MAY 09 2014

DOCKETED BY

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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP

Chairman

GARY PIERCE

Commissioner

BRENDA BURNS

Commissioner

BOB BURNS

Commissioner

SUSAN BITTER SMITH

Commissioner

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_____)

DOCKET NO. WS-02987A-13-0477

DIRECT

TESTIMONY

OF

ROBERT G. GRAY

EXECUTIVE CONSULTANT III

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

MAY 9, 2014

TABLE OF CONTENTS

	Page
INTRODUCTION	1
RECOMMENDATIONS AND ENCOURAGEMENTS	2

SCHEDULES

Staff Report	RGG-1
Staff Engineering Report.....	RGG-2
Staff Response to Commissioner Bitter-Smith’s Letter Dated March 24, 2014	RGG-3
Staff Memorandum Showing Johnson Service Area	RGG-4

**EXECUTIVE SUMMARY
JOHNSON UTILITIES, LLC
DOCKET NO. WS-02987A-13-0477**

Staff recommends approval of the sale and transfer of assets of Johnson Utilities, LLC ("Johnson") to the Town of Florence.

Staff further recommends that Johnsons' Certificate of Convenience and Necessity ("CC&N") be cancelled, and that the CC&N cancellation will be effective upon the closing of the sale and transfer of assets to the Town of Florence.

Staff further recommends that Johnson shall notify the Commission with a filing in this docket, within 30 days of the closing of this transaction, documentation evidencing the closing of the sale and transfer of assets to the Town of Florence.

1 **INTRODUCTION**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Robert G. Gray. I am an Executive Consultant III employed by the Arizona
4 Corporation Commission (“ACC” or “Commission”) in the Utilities Division (“Staff”). My
5 business address is 1200 West Washington Street, Phoenix, Arizona 85007.

6
7 **Q. Briefly describe your responsibilities as an Executive Consultant III.**

8 A. In my capacity as an Executive Consultant III, I provide policy analysis and
9 recommendations to the Commission on a variety of natural gas, electric, water, and
10 wastewater matters.

11
12 **Q. Please describe your educational background and professional experience.**

13 A. In 1988 I graduated from the University of Minnesota – Duluth, receiving a Bachelor of Arts
14 degree in geography. In 1990, I graduated from Arizona State University, receiving a Master
15 of Arts degree in geography. Since joining the Utilities Division Staff in June 1990, I have
16 worked on a wide variety of natural gas, electric, telecommunications, water, and wastewater
17 matters that have come before the Commission. I have also been involved in the National
18 Association of Regulatory Utility Commissioners (“NARUC”) for many years, including
19 service as the Chair and Vice Chair of the NARUC Staff Subcommittee on Gas.

20
21 **Q. What is the scope of your testimony in this case?**

22 A. I will address the application of Johnson Utilities LLC (“Johnson”) for Commission approval
23 of the sale and transfer of assets to the Town of Florence (“Florence” or “Town”) and
24 cancellation of its Certificate of Convenience and Necessity (“CC&N”). I will provide Staff’s
25 recommendations regarding the proposed transaction and cancellation.
26

1 **Q. Have you reviewed the Direct Testimony of Johnson's witness Daniel Hodges and the**
2 **Direct Testimony of Florence witness Charles A. Montoya?**

3 A. Yes.

4
5 **Q. Did you prepare the attached Staff Report which contains Staff's review and analysis**
6 **of the proposed transaction and cancellation?**

7 A. Yes, it is Attachment RGG-1 of this testimony.

8

9 **RECOMMENDATIONS AND ENCOURAGEMENTS**

10 **Q. Please summarize Staff's recommendations.**

11 1. Staff recommends approval of the sale and transfer of assets of Johnson Utilities to
12 the Town of Florence.

13 2. Staff further recommends that Johnsons' CC&N be cancelled, and that the CC&N
14 cancellation will be effective upon the closing of the sale and transfer of assets to the
15 Town of Florence.

16 3. Staff further recommends that Johnson notify the Commission with a filing in this
17 docket, within 30 days of the closing of this transaction, documentation evidencing
18 the closing of the sale and transfer of assets to the Town of Florence.

19

20 **Q. Has Staff identified any actions that it believes would be beneficial to Florence and its**
21 **customers to undertake following consummation of the transaction?**

22 A. Yes. While Staff is not making these recommendations to the Commission to order, Staff
23 encourages Florence to take the following actions to help ensure that Johnson's customers
24 outside the Town's municipal boundaries have greater opportunity to be involved in
25 Florence's operation of the utility assets acquired from Johnson.

- 1 1. Staff encourages Florence to establish a citizens advisory board to provide customers
2 outside of its municipal boundaries with a greater voice in Town activities that relate
3 to their water and wastewater service.
- 4 2. Staff encourages Florence to expand its annual survey of residents regarding how the
5 Town is performing to include utility customers who are not residents of Florence.

6

7 **Q. Does this conclude your direct testimony?**

8 **A. Yes, it does.**

STAFF REPORT – THE APPLICATION OF JOHNSON UTILITIES LLC FOR APPROVAL OF THE SALE AND TRANSFER OF ASSETS AND CONDITIONAL CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY (DOCKET NO. WS-02987A-13-0477)

On December 31, 2013, Johnson Utilities, LLC dba Johnson Utilities (“Johnson”), filed with the Arizona Corporation Commission (“ACC” or “Commission”) an application for approval of the sale and transfer of assets to the Town of Florence (“Florence” or “Town”) and the conditional cancellation of its Certificates of Convenience and Necessity (“CC&N”).

BACKGROUND

Johnson is an Arizona corporation, certificated to provide water and wastewater services in parts of Pinal County, Arizona, pursuant to Decision No. 60223 (May 27, 1997) and subsequent decisions which have expanded Johnson’s water and wastewater CC&Ns. Johnson provides service to over 22,100 water customers and 29,200 wastewater customers across approximately 72 square miles in its water CC&N and 87 square miles in its wastewater CC&N. Staff’s maps of the CC&Ns are attached as Exhibit 1 to this memo in the form of a memo from Lori Miller.

Following Johnson’s filing of the application on December 31, 2013, Swing First Golf LLC filed for intervention on February 4, 2014. Swing First’s application to intervene was granted on February 14, 2014. On March 4, 2014, Staff filed a Letter of Sufficiency. On March 10, 2014, the Residential Utility Consumer Office (“RUCO”) filed an application to intervene. On March 14, 2014, RUCO’s application to intervene was granted. On March 19, 2014, Pulte Home Corporation (“Pulte”) filed an application to intervene. On March 31, 2014, Pulte’s application to intervene was granted. On March 28, 2014, Johnson filed the Direct Testimony of Daniel Hodges in this proceeding. On April 2, 2014, the Town of Florence (“Florence”) filed an application to intervene. On April 4, 2014, Florence’s application to intervene was granted. On April 9, 2014, Florence filed the Direct Testimony of Charles A. Montoya. On April 11, 2014, Karen Christian, Todd J. Hubbard, Alden L. Weight, and Steve Pratt filed an application to intervene. On April 14, 2014, the San Tan Heights Homeowners Association (“San Tan HOA”) filed an application to intervene. These applications to intervene were granted on April 21, 2014.

In Johnson’s initial application, the Company indicated that upon the Utilities Division finding the application sufficient, Johnson would withdraw it pending applications in Docket Nos. WS-02987A-12-0136, WS-02987A-13-0284, and WS-02987A-13-0310 for extensions of its water and wastewater CC&Ns. On March 24, 2014, in the 12-0136 docket, Johnson filed a request for the Commission to take action on this docket, given the additional time it could take for the transaction to occur with Florence putting the transaction up for voter approval. On March 11, 2014, Staff filed a response, indicating that Staff did not oppose Johnson’s request, but that it left it to the Administrative Law Judge’s discretion whether to issue a Recommended Opinion and Order, given that resolution of WS-02987A-12-0136 might occur around the time the Florence transaction was acted on by the Commission. No further action has occurred regarding the 12-0136 docket since Staff’s March 11th filing. Florence witness Montoya’s direct testimony indicates the Town plans to serve the extension areas requested by Johnson. Staff believes that such a resolution is reasonable.

Florence has scheduled a special election on May 20, 2014, to allow Florence voters to decide whether to authorize the town council to move forward with the transaction. In the initial application, Johnson indicated that Florence would form a non-profit municipal property corporation to hold the assets acquired from Johnson. Subsequently, Mr. Hodges indicated in his Direct Testimony that Florence has now determined that it will directly hold the assets acquired from Johnson.

A draft copy of the agreement between Johnson and Florence was attached to the May 28, 2014 Direct Testimony of Dan Hodges on behalf of Johnson. Staff's understanding is that a final agreement has not been reached between Johnson and Florence to date, but that there are not expected to be any substantive changes from the draft agreement attached to Mr. Hodges' testimony.

The main provisions of the Agreement are as follows:

1. Florence pays a purchase price of \$121,000,000 in the form of non-recourse revenue bonds to acquire all the assets of Johnson and Southwest Environmental Utilities, LLC ("SEU").
2. Johnson will enter into a management agreement with Florence to operate the business for five years.
3. Florence assumes Johnson's obligations under existing main extension agreements and master utility agreements.
4. Florence will assume all existing customer accounts and will receive customer deposits held on account.
5. Florence will receive \$2,500,000 cash in the off-site facilities hookup fee account.
6. Florence will receive any balance in the Central Arizona Groundwater Replenishment District ("CAGR") adjuster fee account, reduced by any shortfall from the October 2013 CAGR bill advanced by Johnson.

In Mr. Montoya's direct testimony on behalf of Florence, the following commitments are made:

1. Florence will serve all current and future Johnson Utilities customers whether within or without the Town's boundaries.
2. Florence will assume Johnson's obligations under existing line extension agreements.
3. Florence will serve all future customers in the areas covered by current Johnson CC&N extension requests that are before the Commission.
4. Florence does not intend to change the rates charged by Johnson for at least 18 months from the time of the acquisition.
5. Florence will refund customer deposits pursuant to Town Code 50.121.
6. Florence will honor existing water main extension agreements and sewer line extension agreements.

JOHNSON'S FACILITIES

Johnson has two water systems, the Main System and the Anthem System. The Main System has a productive capacity of 12,800 gallons per minute ("GPM") and serves 20,170 customers as of 2012. The Anthem system has a productive capacity of 2,329 GPM and serves approximately 2,000 customers as of 2012. Both systems have adequate production and storage to serve existing customers and reasonable growth.

Johnson has six wastewater treatment systems, with four being active and two being inactive. The active systems include the Section 11 Wastewater Treatment Plant ("WWTP") System, the Pecan Water Reclamation Plant ("WRP") System, the San Tan WRP System, and the Anthem at Merrill Ranch WRP System. The Precision Golf Course WWTP and the Copper Basin System are inactive. Further details on Johnson's water and wastewater systems are contained in Staff's Engineering Report, which is Attachment RGG-2 to Staff Witness Gray's Direct Testimony in this proceeding.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY ("ADEQ") COMPLIANCE FOR JOHNSON AND FLORENCE

A February 7, 2014 ADEQ status report indicated that Johnson's water systems have no major deficiencies and water delivered meets applicable national and state drinking water regulations.

A February 7, 2014 ADEQ status report indicated that Florence's water system has no major deficiencies and water delivered meets applicable national and state drinking water regulations.

A January 31, 2014 ADEQ status report indicated that Johnson's Pecan and San Tan WRPs were not in violation at a level at which ADEQ will take action or issue a Notice of Opportunity to Correct or Notice of Violation and/or are in compliance with the Order/Judgment and/or are in compliance with an Order/Judgment for the review period of April 1, 2013 to September 30, 2013. The January 31, 2014 ADEQ status report also indicated that Johnson's Section 11 WWTP, Anthem at Merrill Ranch WRP, and Precision Golf Course WWTP are in compliance with ADEQ regulations for the review period of April 1, 2013 to September 30, 2013.

A January 31, 2014 ADEQ status report indicated that Florence's North WWTP was not in compliance with its permits, wastewater regulation, and/or Order/Judgment for the review period of October 1, 2012 to September 30, 2013. The January 31, 2014 ADEQ status report also found that Florence's South WWTP was not in violation at a level at which ADEQ will take action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment and/or is in compliance with an Order/Judgment for the review period of October 1, 2012 to September 30, 2013.

ARIZONA DEPARTMENT OF WATER RESOURCES ("ADWR") COMPLIANCE FOR JOHNSON AND FLORENCE

A February 14, 2014 ADWR compliance status report indicates that Johnson's Main water system is currently in compliance with ADWR requirements governing water providers and/or community water systems. A February 14, 2014 ADEQ compliance status report indicates that Johnson's Anthem water system is currently out of compliance with ADWR requirements governing water providers and/or community water systems.

A February 14, 2014 ADWR compliance status report indicates that Florence's water system is in compliance with ADWR requirements governing water providers and/or community water systems.

ACC COMPLIANCE

As of April 10, 2014, Johnson has no delinquent compliance items according to the ACC's Compliance Section database. Johnson is in good standing with the Commission's Corporations Division as well.

NOTICE

In Mr. Hodges Direct Testimony he indicates that Johnson provided notice to current and prospective customers via a number of different avenues. The ways notice was provided according to Mr. Hodges include:

1. In the Company's March newsletter that was included in customers' monthly bills, Johnson provided notice to current customers of the proposed sale and transfer of assets.
2. Johnson also made the newsletter and notice available on its website.
3. Johnson also mailed a notice to all current customers via first class mail.
4. Johnson further published the notice in the March 24, 2014 statewide edition of *The Arizona Republic*.
5. Johnson additionally provided notice to landowners in its three proposed CC&N service extension areas.

RATES AND CUSTOMER SERVICE

Johnson Utilities serves customers that are both within and outside the municipal boundaries of Florence. Based on information provided by Johnson, approximately 20,800 water customers are outside Florence's municipal boundaries, with another approximately 2,200 customers within Florence's municipal boundaries as of December 2013. For wastewater service, Johnson serves approximately 28,800 customers who are outside Florence's municipal boundaries, with another approximately 2,100 customers within Florence's municipal boundaries as of December 2013.

Florence has indicated that it intends to continue to charge Johnson customers their existing rates for the first 18 months after the acquisition is completed, while the Town conducts a rate study. It is unclear what current Johnson customers would pay once the rate study would be completed. Staff addressed a number of questions regarding service to customers outside Florence's municipal boundaries in Staff's April 3, 2014 response to Commissioner Bitter-Smith's March 24, 2014 letter in this docket. Staff's response is included as Attachment RGG-3 to Staff's testimony in this proceeding.

Florence currently has separate monthly charges and volumetric rates for water service for customers within its municipal boundaries and outside its municipal boundaries, with the outside municipal boundaries rate being higher. For example, the monthly charge for a 5/8 x 3/4-inch meter is currently \$21.28 for customers within the municipal boundary and \$27.66 for customers outside the municipal boundary. Current Johnson water rates are relatively similar to current Florence rates for customers within the municipal boundaries. Current Johnson rates are lower than current Florence rates for customers outside the municipal boundaries. The table below shows some example residential monthly bills (reflecting the monthly customer charge and volumetric rate, but excluding other miscellaneous charges).

Monthly Consumption (gallons)	Johnson Rates	Florence Rates – Within Municipal Boundary	Florence Rates – Outside Municipal Boundary
5,000	\$26.13	\$28.88	\$37.36
7,500	\$31.51	\$32.68	\$42.21
10,000	\$36.88	\$36.48	\$47.06
15,000	\$44.04	\$43.23	\$55.66

Note: Johnson estimates are based on a 3/4 inch meter. Florence estimates are based on a 5/8-3/4 inch meter. If Johnson estimates used a 5/8 inch meter instead, the Johnson monthly charge and total bill would be \$5.63 lower.

Based on the Florence's February 28, 2012 Notice of Intention to Increase Water, Wastewater, and Solid Waste Rates (available on Florence's website), Florence will have annual rate increases for water and wastewater service each year through 2016. For example, the \$21.28 monthly charge cited above for a 5/8 x 3/4-inch meter for a Florence customer within the municipal boundary would rise gradually, reaching \$24.63 on July 1, 2016. It is also worth noting that current Johnson customers within Florence's municipal boundaries would no longer pay a 5 percent franchise fee to Florence on their bills once the acquisition is completed.

Wastewater rates are more difficult to compare, as Johnson has a single flat wastewater rate, while Florence has both a flat wastewater rate and a volumetric rate. Johnson provided Staff with an estimated monthly bill comparison for wastewater service for a customer residential customer using 7,500 gallons, with a 3/4-inch meter. In this comparison, a current customer for Johnson would pay \$42.00, while a Florence customer would pay \$39.09. Florence does not charge different rates for wastewater service based upon whether a customer is located inside its municipal boundaries or not, although it has a separate line item in its rate schedule for residential customers outside the municipal boundaries.

Florence is an experienced water and wastewater utility provider. After the transaction is completed, Johnson will continue to operate the system for five years under a management agreement it would enter into with Florence as part of this transaction. Florence has indicated that it will honor the approximately 274 water main extension agreements and 260 sewer line extension agreements it would inherit from Johnson. Florence would also refund customer deposits pursuant to Town Code section 50.121.

Florence Witness Montoya indicates that Florence endeavors to provide the highest level of service to its utility customers and that Florence sends out an annual survey to residents to find out how the Town is doing. Staff encourages Florence to expand this survey to include utility customers who are not residents of Florence.

Possible Formation of a Citizens Advisory Board

There have been concerns expressed in this proceeding that Johnson customers outside of Florence's municipal boundaries will lack representation, as they cannot vote in Florence municipal elections. One possible solution to this concern would be for Florence to form a Citizen Advisory Board ("CAB") to provide customers outside its municipal boundaries with a voice regarding their water and wastewater service from the Town.

This formation of a CAB has been used in the past in proceedings before the Commission where a municipality was acquiring a public service corporation regulated by the Commission and at least some customers of the utility did not live in the acquiring municipality's boundaries. For example, in Decision No. 69575 (May 21, 2007), the Commission approved the acquisition of Desert Hills Water Company by the Town of Cave Creek. Ordering Paragraph 21 of this order notes that the Town "will establish a Citizens' Water Advisory Committee to review plans, policies, the master plan, the capital program, and rates and fees and advise the Town Engineer, the Manager, and the Council." Decision No. 69575 further notes that Cave Creek intends to model its board after the City of Tucson's Citizens Water Advisory Committee. Staff encourages Florence to establish a CAB to provide customers outside of its municipal boundaries with a greater voice in Town activities that relate to their water and wastewater service.

Customer Complaints

The Utilities Division's Consumer Services Database indicates that as of April 29, 2014, the following number of complaints about Johnson in recent years: 2011 – 45, 2012 – 27, 2013 – 38, 2014 – 6. All complaints have been resolved. Additionally, there have been seven contacts opposing the sale and transfer of assets and two contacts in favor.

RECOMMENDATIONS

Staff recommends approval of the sale and transfer of assets of Johnson Utilities to the Town of Florence.

Staff further recommends that Johnson Utilities' certificate of convenience and necessity be cancelled, and that the CC&N cancellation will be effective upon the closing of the sale and transfer of assets to the Town of Florence.

Staff further recommends that Johnson Utilities shall notify the Commission with a filing in this docket, within 30 days of the closing of this transaction, documentation evidencing the closing of the sale and transfer of assets to the Town of Florence.

MEMORANDUM

DATE: April 15, 2014

TO: Bob Gray
Executive Consultant III

FROM: Dorothy Hains, P. E. *DH*
Utilities Engineer

RE: The Application of Johnson Utilities, LLC, Doing Business as Johnson Utilities Company for Approval of Sale and Transfer of Assets and Conditional Cancellation of Its Certificate of Convenience and Necessity (Docket No. WS- 02987A-13-0477)

I. BACKGROUND

Johnson Utilities, LLC dba Johnson Utilities (“Johnson” or “Company”) filed an application for Approval of Sale and Transfer of Assets and Conditional cancellation of its Certificate of Convenience and Necessity (“CC&N”) with the Arizona Corporation Commission (“ACC”) on December 31, 2013. The Company is in negotiations with the Town of Florence (“Florence”) to sell its assets to Florence. The Company owns and operates a potable water facility and a wastewater treatment and disposal facility. Both potable water and wastewater facilities are located in Pinal County between the Town of Queen Creek to the north and Florence to the south.

II. LOCATIONS OF JOHNSON’S FACILITIES*A. Johnson’s Potable Water Systems*

The Company provides its water service to approximately 22,200 metered customers within approximately 73 square miles which includes all or portions of Sections 1, 2, 8-17 and 19-36 of Township 7 East and Range 3 South; Sections 6-7, 13, 15-21, 23-24, 27-33 and 36 of Township 8 East and Range 3 South; Sections 1-3, 10-14, 22-25, 27, 34, and 36 of Township 9 East and Range 3 South; Section 31 of Township 8 East and Range 2 South; Section 6 of Township 9 East and Range 5 South and Section 3 of Township 8 East and Range 5 South.

B. Johnson’s Wastewater Systems

The Company provides its wastewater service to approximately 29,300 customers within approximately 88 square miles which includes all or portions of Sections 1, 2, 8-17 and 19-36 of Township 7 East and Range 3 South; Sections 2, 5-7, 11, 13-21, 23-24, 27-33 and 36 of Township 8 East and Range 3 South; Sections 1-3, 10-14, 22-25, 27, 34, and 36 of Township 9 East and Range 3 South; Sections 7-9, 16-22, 27-34 of Township 8 East and Range 2 South; Section 6 of Township 9 East and Range 5 South and Section 3 of Township 8 East and Range 5 South.

III. DESCRIPTION OF JOHNSON'S FACILITIES¹

A. Johnson's Potable Water Systems

The Company owns and operates two individual water systems, Johnson Utilities Main System ("Main System") and Anthem System. Arizona Department of Environmental Quality ("ADEQ") assigned Public Water System ("PWS") Identification No.11-128 to the Main System and PWS No.11-136 to the Anthem System.

1. Main System (PWS No.11-128)

The Main System consists of eighteen active production wells that have 12,800 gallons per minute ("GPM") combined production capacity, thirteen storage tanks with a 7,250,000 gallon storage capacity, a 250 GPM reverse osmosis ("RO") treatment plant for arsenic removal and a distribution system serving approximately 20,170 metered customers. In 2012, the average daily water usage was 309 gallons per day ("GPD") per connection; the peak day demand was 397 GPD per connection; water loss was 7.33 percent which is below Staff's recommended 10 percent allowable limit. This system has adequate production and storage capacity to serve existing customers and reasonable growth.

2. Anthem System (PWS No.11-136)

The Anthem System consists of three active production wells that have 2,329 GPM combined production capacity, two storage tanks with a 1,500,000 gallon storage capacity and a distribution system serving approximately 2,000 metered customers. In 2012 the average daily water usage was 388 GPD per connection; the peak day demand was 561 GPD per connection; water loss was 9.3 percent which is below Staff's recommended 10 percent allowable limit. This system has adequate production and storage capacity to serve existing customers and reasonable growth.

B. Johnson's Wastewater Systems

The Company owns six individual wastewater treatment systems. Each system contains a sewer collection system, lift stations ("LS"), wastewater treatment plant ("WWTP") and disposal system. The six wastewater treatment systems are Section 11 WWTP System, Precision WWTP System, Pecan Water Reclamation Plant ("WRP") System, San Tan WRP System, Copper Basin System and Anthem at Merrill Ranch WRP System. Only four active systems are in service; they are Section 11 WWTP System, Pecan WRP System, San Tan WRP System and Anthem at Merrill Ranch WRP System.

1. Section 11 WWTP

Section 11 WWTP is equipped with headworks, an aeration lagoon and wetland cells for nutrient removal and ultraviolet disinfection units. Final effluent is disposed of in an effluent reuse

¹ Based on the Company's 2012 Annual Report filed with the ACC.

lake. Section 11 WWTP has a 1.6 million gallons per day (“MGD”) treatment capacity. The Company operates the plant under ADEQ approved Aquifer Protection Permit (“APP”) No. 103081. In 2012 it served 6,755 existing customers with an average daily flow of 139 GPD per connection and the peak day flow was 0.86 MGD.

2. Pecan WRP

Pecan WRP is an extended aeration WWTP that is equipped with clarifiers, filters and ultraviolet disinfection units. Final effluent is disposed of in a recharge basin and on a golf course for irrigation. Pecan WRP has a 2 MGD treatment capacity. The Company operates the plant under ADEQ approved APP No. 105324. In 2012, it served 10,448 existing customers with an average daily flow of 139 GPD per connection and the peak day flow was 1.5 MGD.

3. San Tan WRP

San Tan WRP is an extended aeration WWTP that is equipped with clarifiers, filters and ultraviolet disinfection units. Final effluent is disposed of in a recharge basin and on a golf course for irrigation. San Tan WRP has a 2 MGD treatment capacity. The Company operates the plant under ADEQ approved APP No. 105325. In 2012, it served 7,319 existing customers with an average daily flow of 139 GPD per connection and the peak day flow was 0.91 MGD.

4. Anthem at Merrill Ranch WRP

Anthem at Merrill Ranch WRP is an extended aeration WWTP that is equipped with clarifiers, filters and ultraviolet disinfection units. Final effluent is disposed of in a recharge basin and on a golf course for irrigation. Anthem at Merrill Ranch WRP has a 1.5 MGD treatment capacity. The Company operates the plant under ADEQ approved APP No. 105646. In 2012, it served 4,713 existing customers with an average daily flow of 119 GPD per connection and the peak day flow was 0.58 MGD.

5. Precision Golf Course WWTP

Precision Golf Course WWTP is an extended aeration WWTP that has a 0.3 MGD treatment capacity. In the Company’s 2012 Annual Report filed with the ACC the Company reported that this facility was inactive.

IV. ADEQ COMPLIANCE

A. Johnson’s Potable Water Systems

Staff received a compliance status report from ADEQ dated February 7, 2014, in which ADEQ stated that both the Main System (PWS No. 11-128) and the Anthem System (PWS No. 11-136) have no major deficiencies and are delivering water that meets water quality standards required by 40 CFR 141 (National Primary Drinking Water Regulations) and Arizona Administrative Code, Title 18, Chapter 4.

B. Florence's Potable Water System

Staff received a compliance status report from ADEQ dated February 7, 2014, in which ADEQ stated that Florence System (PWS No. 11-017) has no major deficiencies and is delivering water that meets water quality standards required by 40 CFR 141 (National Primary Drinking Water Regulations) and Arizona Administrative Code, Title 18, Chapter 4.

C. Johnson's Wastewater Systems

1. Section 11 WWTP

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that Section 11 WWTP (Aquifer Protection Permit ("APP") No. 103081) was in compliance with ADEQ regulations for the review period of April 1, 2013 to September 30, 2013.

2. Pecan WRP

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that Pecan WRP (APP No. 105324) was not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period of April 1, 2013 to September 30, 2013.

3. San Tan WRP

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that San Tan WRP (APP No. 105325) was not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period of April 1, 2013 to September 30, 2013.

4. Anthem at Merrill Ranch WRP

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that Anthem at Merrill Ranch WRP (APP No. 105646) was in compliance with ADEQ regulations for the review period of April 1, 2013 to September 30, 2013.

5. Precision Golf Course WWTP

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ reported that the Precision Golf Course WWTP (APP No. 105004) was in compliance with ADEQ regulations for the review period of April 1, 2013 to September 30, 2013.

D. Florence's Wastewater Systems

1. Florence's North WWTP("North WWTP")

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that the North WWTP was not in compliance with its permit(s), wastewater regulation, and/or Order/Judgment for the review period of October 1, 2012 to September 30, 2013.

2. Florence's South WWTP("South WWTP")

Staff received a compliance status report from ADEQ dated January 31, 2014, in which ADEQ stated that the South WWTP was not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period of October 1, 2012 to September 30, 2013.

V. ARIZONA DEPARTMENT OF WATER RESOURCES ("ADWR") COMPLIANCE

A. Johnson's Potable Water Systems

1. Main System (PWS No.11-128)

The Company's Main System is located in ADWR's Phoenix Active Management Area. According to ADWR compliance status report dated February 14, 2014 ADWR has determined that this water system is currently compliant with departmental requirements governing water providers and/or community water systems.

2. Anthem System (PWS No.11-136)

The Company's Anthem System is located in ADWR's Pinal Active Management Area. According to ADWR compliance status report dated February 14, 2014 ADWR has determined that this water system is currently in non-compliance with departmental requirements governing water providers and/or community water systems².

B. Florence's Potable Water System

The Florence's System is located in ADWR's Pinal Active Management Area. According to ADWR compliance status report dated February 14, 2014 ADWR has determined that this water system is currently compliant with departmental requirements governing water providers and/or community water systems.

² The Company's six wells exceeded permitted pumping limits from 2008 to 2012.

VI. ACC COMPLIANCE

A check of the ACC Compliance Section database dated April 10, 2014, indicates there are no delinquent compliance items for Johnson.

SUMMARY

Conclusions

1. A compliance status report was issued by ADEQ dated February 7, 2014, in which ADEQ stated that both Johnson water systems, the Main System (PWS No. 11-128) and the Anthem System (PWS No. 11-136), have no major deficiencies and are delivering water that meets water quality standards required by 40 CFR 141 (National Primary Drinking Water Regulations) and Arizona Administrative Code, Title 18, Chapter 4.
2. A compliance status report was issued by ADEQ dated February 7, 2014, in which ADEQ stated that Florence System (PWS No. 11-017) has no major deficiencies and is delivering water that meets water quality standards required by 40 CFR 141 (National Primary Drinking Water Regulations) and Arizona Administrative Code, Title 18, Chapter 4.
3. ADWR has determined that the Company's Main System (PWS No. 11-128) is currently compliant with departmental requirements governing water providers and/or community water systems.
4. ADWR has determined that the Company's Anthem System (PWS No. 11-136) is currently in non-compliance with departmental requirements governing water providers and/or community water systems.
5. Staff concludes that Johnson's water systems have adequate production and storage capacity to serve existing customers and reasonable growth.
6. ADWR has determined that the Florence water system is currently compliant with departmental requirements governing water providers and/or community water systems.
7. Wastewater compliance status reports had been issued by ADEQ dated January 31, 2014, in which ADEQ stated that (1) the Section 11 WWTP, the Anthem at Merrill Ranch WRP and the Precision Golf Course WWTP are in compliance with ADEQ regulations; (2) the Pecan WRP and the San Tan WRP were not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or are in compliance with the Order/Judgment for the review period of April 1, 2013 to September 30, 2013.

8. ADEQ's compliance status report was issued for Florence's South WWTP on January 31, 2014, in which ADEQ stated that Florence's South WWTP was not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period of April 1, 2013 to September 30, 2013.
9. ADEQ's compliance status report was issued for Florence's North WWTP on January 31, 2014, in which ADEQ determined that the North WWTP was not in compliance with its permit(s), wastewater regulation, and/or Order/Judgment for the review period of October 1, 2012 to September 30, 2013.
10. A check of the ACC Compliance Section database dated April 10, 2014, indicates there are no delinquent compliance items for Johnson.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

RECEIVED
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CORPORATION COMMISSION
WATER & SEWER CONTROL
Division Utilities

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC, DOING
BUSINESS AS JOHNSON UTILITIES
COMPANY, FOR APPROVAL OF SALE AND
TRANSFER OF ASSETS AND
CONDITIONAL CANCELLATION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. WS-02987A-13-0477

**STAFF'S RESPONSE TO COMMISSIONER
BITTER SMITH'S LETTER DATED
MARCH 24, 2014**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files its response to Commissioner Susan Bitter Smith's letter of March 24, 2014, to the parties to the above-referenced docket.

1. Do the parties agree that Johnson Utilities currently serves customers who reside or are located outside the municipal boundaries of the Town of Florence? If so, please provide an estimate of the number of such customers.

Response: There are customers who reside or are located outside the municipal boundaries of the Town of Florence. According to the recently filed Direct Testimony of Daniel Hodges, as of December 2013, Johnson Utilities served approximately 20,780 water connections and 28,825 sewer connections that were outside the municipal boundaries of the Town of Florence.

2. Should provisions be made to ensure that existing customers who reside or are located outside the municipal boundaries of the Town of Florence will be served by the Town of Florence? Why or why not?

Response: By statute, a municipal utility has certain responsibilities to its non-resident customers. A.R.S. § 9-516 was enacted, in part, by the legislature to govern water service to non-residents by a municipality. The statute prohibits a city from discontinuing water service to non-residents.

1 The court in *Jung v City of Phoenix*, 160 Ariz. 38, 770 P.2d 342 (1989), interpreted A.R.S.
2 §9-516(C) to hold a municipality to a reasonableness standard in the setting of rates. In *Jung*, the
3 plaintiffs were nonresident customers of the City of Phoenix water department, challenging the
4 validity of an ordinance that was enacted in 1985, which doubled water rates for those residing
5 outside of the geographical boundaries of the city.

6 The court in *Jung*, found that the implication of reasonable rates must be read into A.R.S. § 9-
7 516(C), and that the statute placed upon a city the legal duty to continue water service to non-
8 residents at a reasonable rate.

9 The reasonableness standard was codified by A.R.S. § 9-511.01(D), which provides that rates
10 must be just and reasonable, any increases must be justified in a written report available to the public
11 and a hearing must be held. Non-resident customers are protected by statute from being charged
12 unreasonable rates.

13 In Arizona Attorney General Opinion No. 62-7 (January 8, 1962) ("AG Opinion"), the
14 Arizona Attorney General ("AG") responded to Commission questions about the Commission's
15 jurisdiction to hold a hearing regulating the transfer of assets from a privately owned water utility to
16 a municipality and to enter an order approving or disapproving such a transfer. The Commission
17 also asked about the scope of the Commission's inquiries, if such a hearing were permissible, and
18 about the effect of what is now A.R.S. § 9-516(D) on the Commission's jurisdiction. The AG
19 determined that the Commission has jurisdiction over a public service corporation's sale of assets to
20 a municipality because A.R.S. § 40-285 requires a public service corporation to obtain Commission
21 approval before it may dispose of its assets, but that the Commission's inquiries essentially must be
22 limited to whether the proposed transfer will be injurious to the rights of the public and whether any
23 person will thereby be left without service.

24 The AG Opinion further stated that the voluntary agreement by a municipality to purchase a
25 privately owned public utility does not subject that municipality to the jurisdiction of the
26 Commission. The seller-utility must obtain Commission approval to make the transfer, the purpose
27 being to permit the Commission to make sure that the rights of the customers of the utility will be
28

1 adequately protected. The duties and powers of the Commission are limited to the necessary
2 hearings and orders to make sure that sale by the utility will not leave persons without service by the
3 utility or the municipality.

4 The AG Opinion concluded that by virtue of A.R.S. § 9-516, the Commission still retains
5 jurisdiction over the utility and the utility still has an interest as holder of a certificate of convenience
6 and necessity, until the sale has been approved and the municipality is servicing the entire area and
7 there is no area requiring certification or service by any private utility. The AG Opinion concluded
8 that a municipality is bound to honor the order of the Commission with respect to the sale and that
9 the Commission may not enter an order denying the public utility the right to dispose of its assets
10 except upon the grounds that the utility is not in fact terminating its function in the service of its
11 customers, the effect of A.R.S. § 40-285(C). If the municipality refuses to serve customers in the
12 area taken over, the Commission retains the power to investigate such refusals and issue a new
13 certificate if necessary to provide service.

14 **3. If customers outside the municipal boundaries will be served by the Town**
15 **of Florence, should provisions be made to ensure that such are treated on**
16 **an equal footing with those customers who reside or are located within the**
municipal boundaries? Why or why not?

17 **Response:** The Commission has considered several cases where a municipality acquires
18 the assets of a water or wastewater provider and has customers who reside outside of the municipal
19 boundaries. Most recently, the Commission approved the transfer of assets of H2O, Inc. to the Town
20 of Queen Creek. In that matter, there were H2O customers who resided outside of the Queen Creek
21 municipal boundaries. The Town of Queen Creek committed to provide the same level of service to
22 the non-resident customers, as is provided to its residents. The Town of Queen Creek proposed to
23 charge the H2O customers its then current rates, which resulted in a minimal increase for customers
24 who use up to 10,000 gallons. H2O customers who use more than 10,000 would see a slight decrease.
25 In Decision No. 74085 (September 23, 2013), the Commission approved the transfer.

1 In 2006 Desert Hills Water, filed an application to transfer its assets to the Town of Cave
2 Creek, Arizona. ¹ Desert Hills provided water service to approximately 1,600 customers. The Desert
3 Hills customers were outside the boundaries of the Cave Creek. Cave Creek intended to form a
4 citizens advisory board, consisting of four members from the Desert Hills area, five from Cave Creek,
5 and one from the Carefree area (an area that is being served by Cave Creek Water, soon to be
6 purchased by the Town), and their meetings would be open to the public.² It was the Town's
7 intention to model the board after the Citizens Water Advisory Committee of the City of Tucson.
8 Cave Creek also committed to provide notice and hold a public hearing in Desert Hills if a rate
9 change was being contemplated. Cave Creek had agreed to freeze the current rates for one year
10 following the close of the transaction. The Commission found that with the commitments made by
11 Cave Creek, the transfer was in the public interest.³

12 **4. If such provisions should be made, please provide some recommendations**
13 **regarding the nature and substance of methods or processes to ensure**
14 **equal treatment.**

15 **Response:** The City of Tucson, as a part of its overall water management strategy,
16 created the Citizens Water Advisory Committee (Tucson Code, Sec. 27-60 et. seq.). The
17 Committee advises and assists the Mayor and City Council in the development of policies and the
18 setting of rates. City residency is not required and the members are appointed by the Mayor and
19 Council and are also nominated by the City Manager. If the Town of Florence models its board
20 after the Tucson model, the non-resident customers of its water systems should have an adequate
21 voice to promote the concerns of the non-residents.

22 If the Commission is concerned about the ability of non-residents to have a voice in utility
23 rates, Staff suggests that the Town of Florence create a citizens advisory board as has been done in
24 other cases where a similar concern arose.

25 **5. I note that in the application, Johnson Utilities states "For a period of 18**
26 **months following the acquisition the Town has no plans to change the**
27 **rates charged to existing customers of Johnson Utilities." Please provide**
28 **comments regarding the duration and specific terms of this commitment.**

¹ Docket No. W-02124A-06-0717.

² Decision No. 69575 (May 21, 2007) at 9.

³ *Id.* at 11.

1 Michele Van Quathem
2 RYLEY CARLOCK & APPLEWHITE
3 One North Central Avenue, Suite 1200
4 Phoenix, AZ 85004-4417
5 Attorneys for Pulte Home Corporation

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MEMORANDUM

TO: Bob Gray
Executive Consultant III
Utilities Division

FROM: Lori H. Miller
GIS Specialist 
Utilities Division

THRU: Del Smith 
Engineering Supervisor
Utilities Division

DATE: January 23, 2014

RE: **JOHNSON UTILITIES, LLC (DOCKET NO. WS-02987A-13-0477)**

Johnson Utilities has filed an application to cancel its CC#N. The Town of Florence will be serving this area.

Attached are copies of the maps for your files.

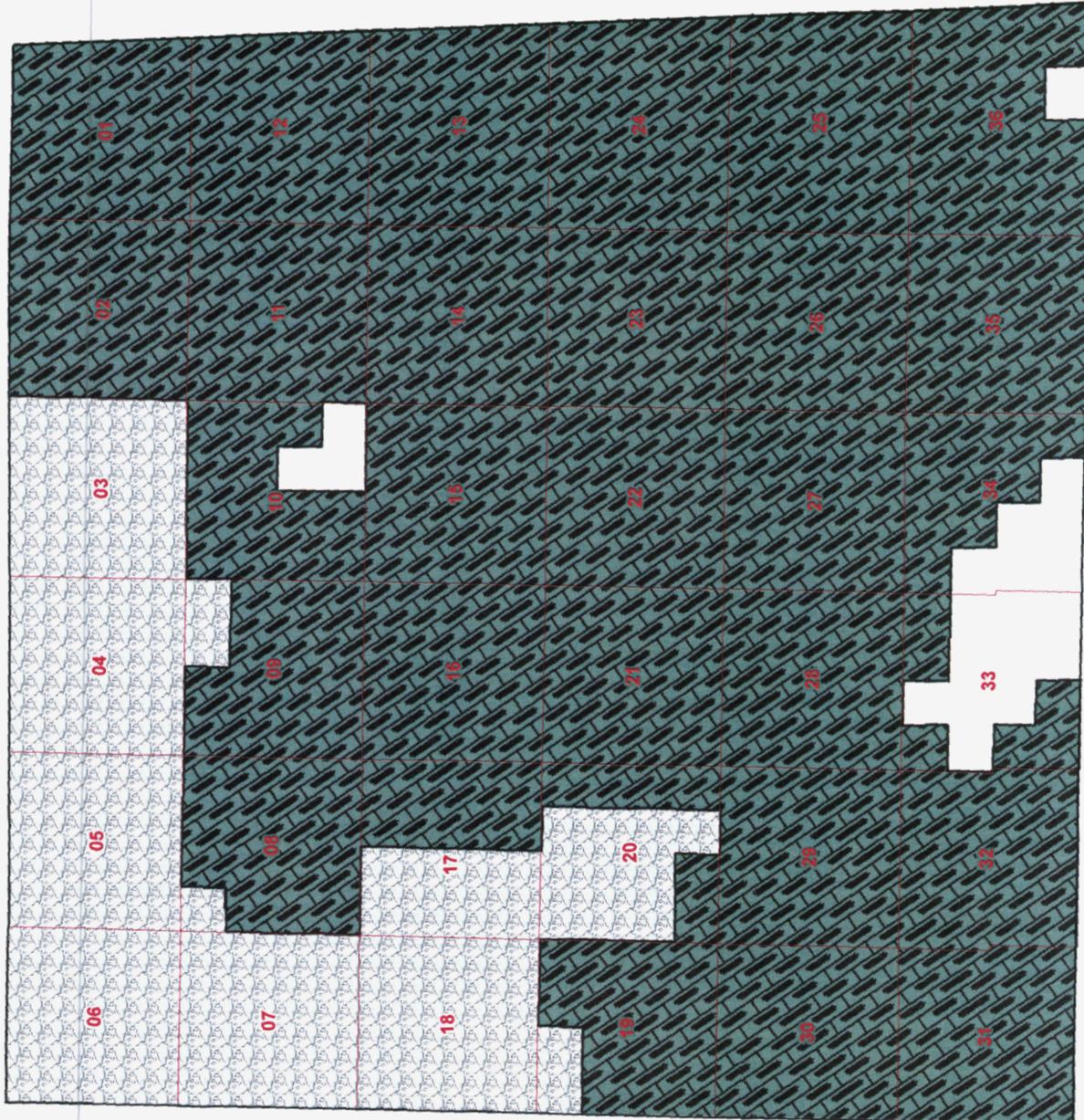
/lhm

Attachments

cc: Mr. George H. Johnson
Mr. Jim Mannato
Ms. Deb Person (Hand Carried)
Ms. Dorothy Hains
File

RANGE 7 East

TOWNSHIP 3 South



WS-02987A (8)

Johnson Utilities, LLC



(2)

Town of Queen Creek (Nonjurisdictional)



Sewer

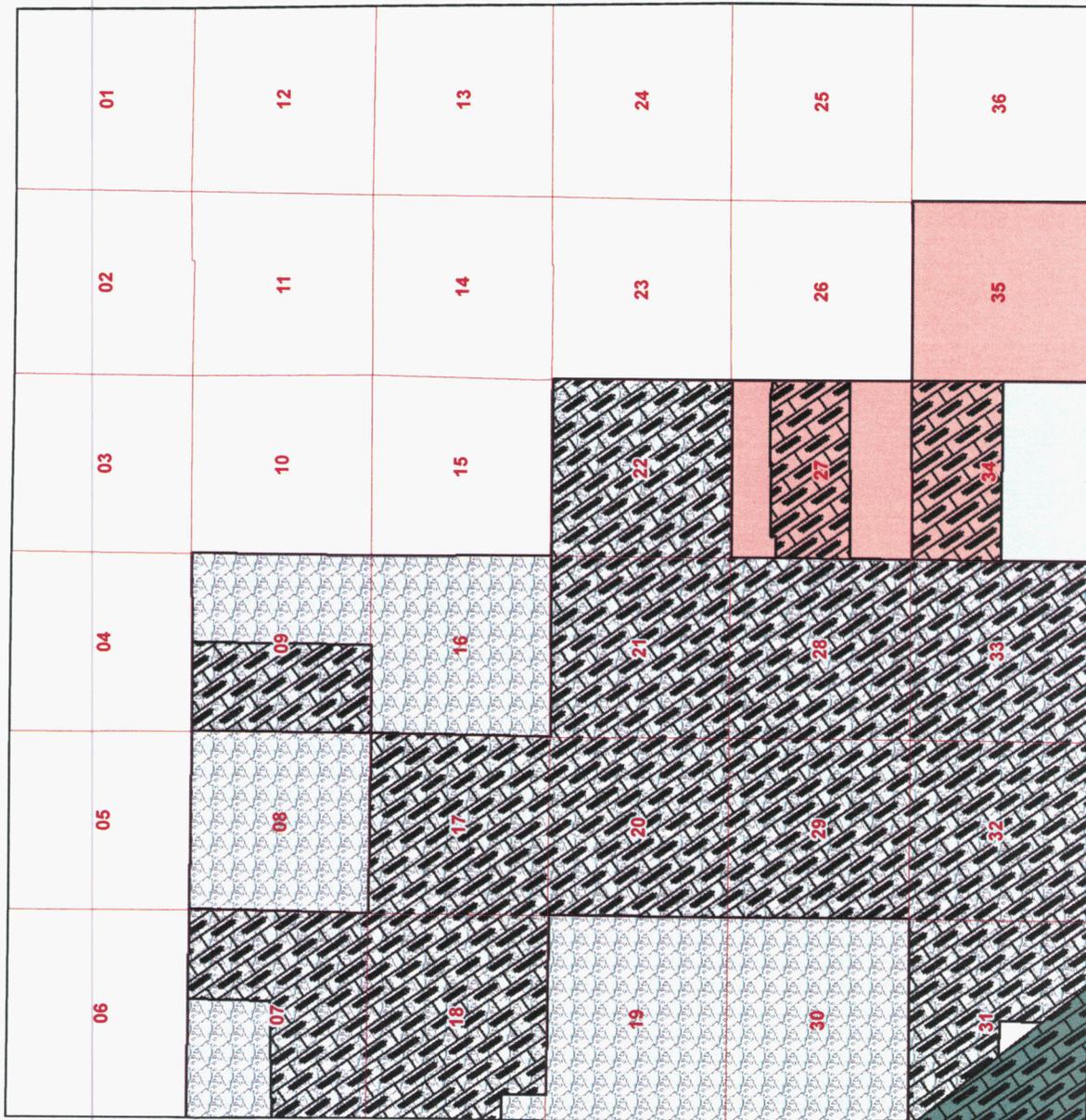
Johnson Utilities, LLC (Water and Sewer)
 Docket No. WS-02987A-13-0477
 Application for Cancellation
 To Town of Florence



Prepared by:
 Arizona Corporation Commission
 Utilities Division
 Engineering Section/GIS Mapping
 602-542-4251

RANGE 8 East

TOWNSHIP 2 South



W-02859A (2)

Diversified Water Utilities, Inc.

WS-02987A (8)

Johnson Utilities, LLC

W-02425A (2)

Sun Valley Farms Unit VI Water Company

(2)

Town of Queen Creek (Nonjurisdictional)

Johnson Utilities, LLC (Water and Sewer),
 Docket No. WS-02987A-13-0477
 Application for Cancellation
 To Town of Florence



Prepared by:
 Arizona Corporation Commission
 Utilities Division
 Engineering Section/GIS Mapping
 602-542-4251

RANGE 9 East

TOWNSHIP 4 South



WS-02987A (8)
 Johnson Utilities, LLC
 (4)
 City of Florence (Nonjurisdictional)

(2)
 Johnson Utilities, LLC
 Docket No. WS-02987A-12-0136
 2nd Amended Application for
 Extension for Water & Sewer

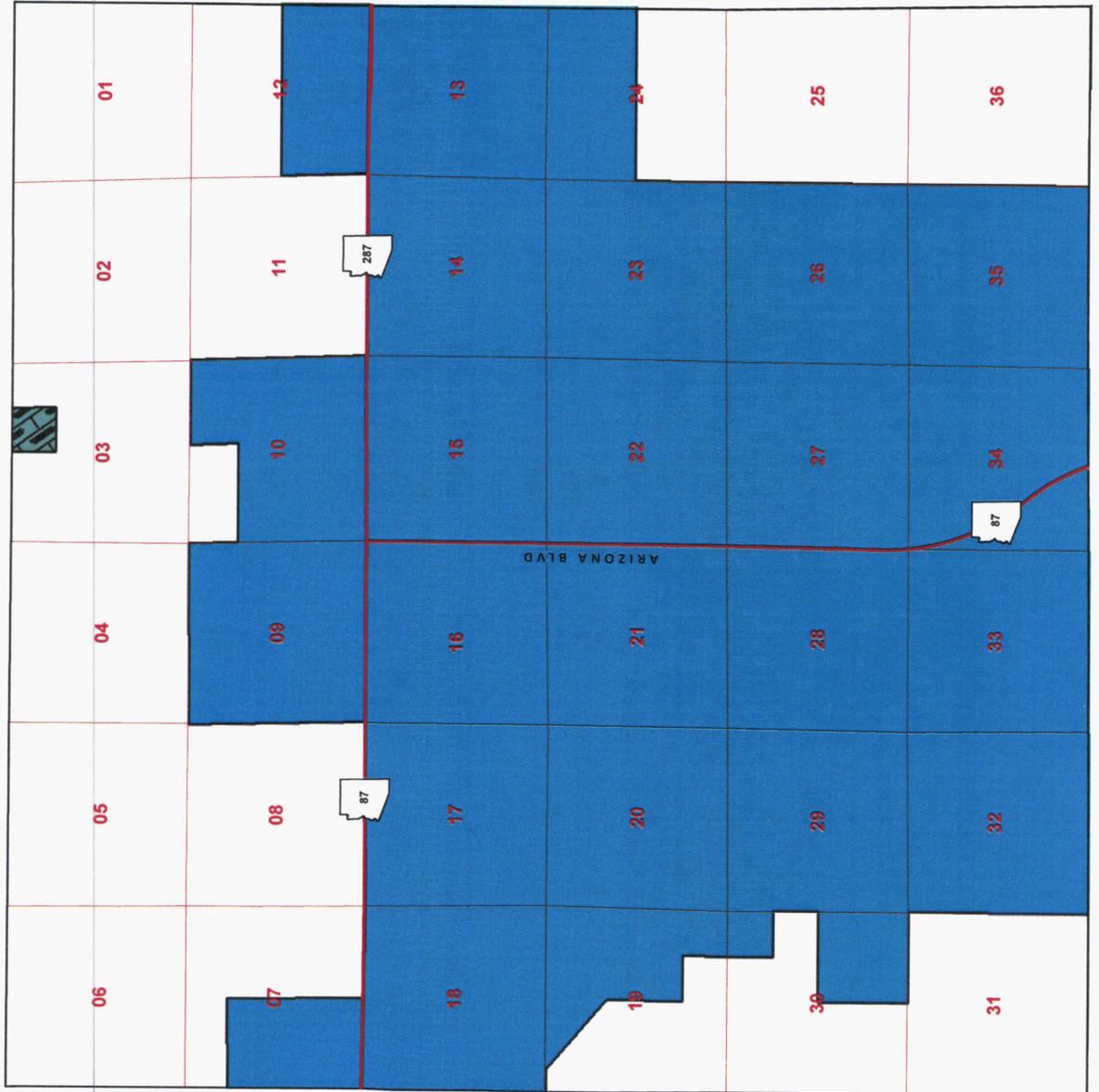
Johnson Utilities, LLC (Water and Sewer)
 Docket No. WS-02987A-13-0477
 Application for Cancellation
 To Town of Florence



Prepared by:
 Arizona Corporation Commission
 Utilities Division
 Engineering Section/GIS Mapping
 602-542-4251

RANGE 8 East

TOWNSHIP 5 South



-  W-01445A (40) (4)
-  Arizona Water Company (Coolidge)
-  WS-02987A (8)
- Johnson Utilities, LLC

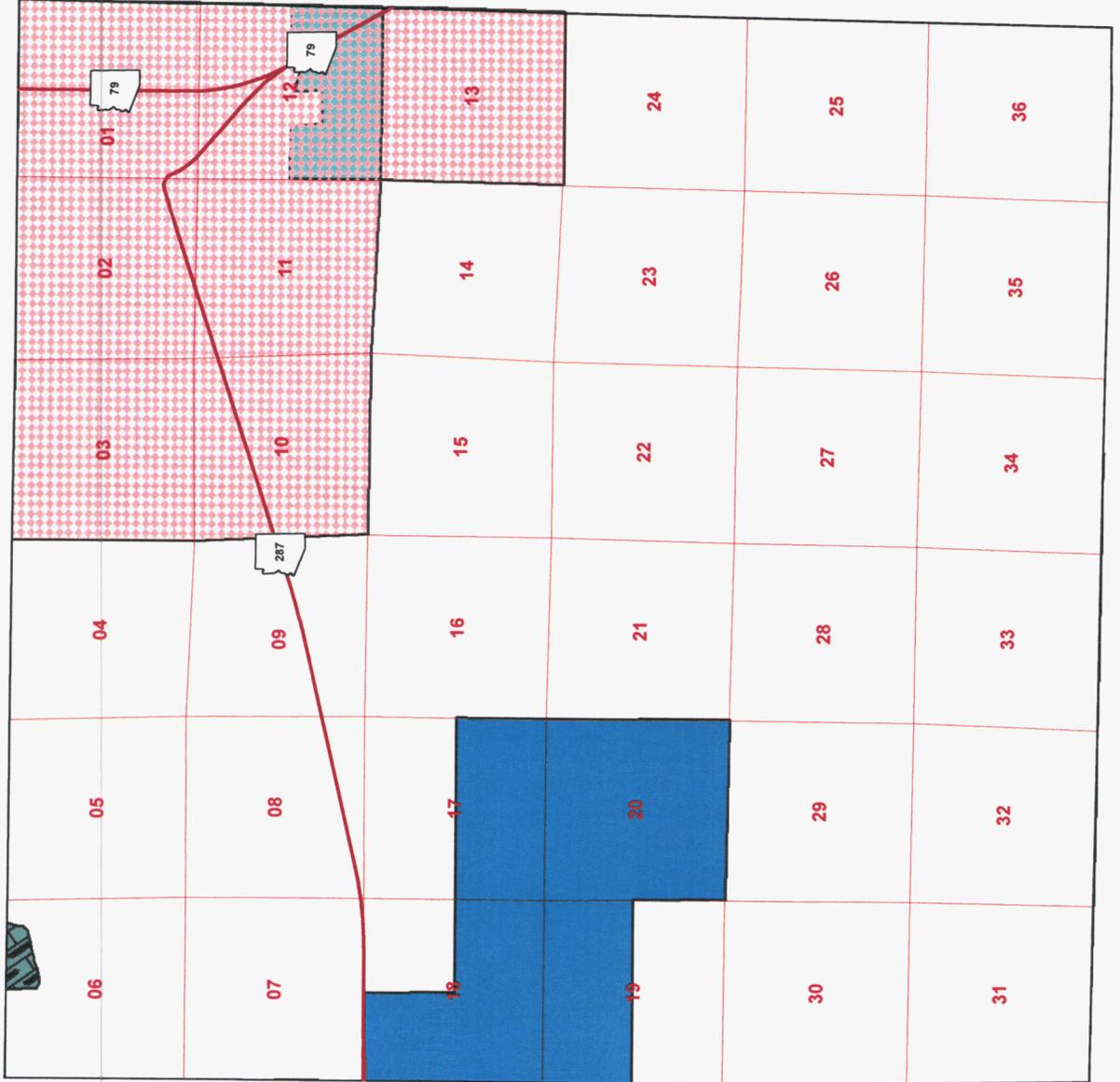
Johnson Utilities, LLC (Water and Sewer),
 Docket No. WS-02987A-13-0477
 Application for Cancellation
 To Town of Florence



Prepared by:
 Arizona Corporation Commission
 Utilities Division
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 602-542-4251

RANGE 9 East

TOWNSHIP 5 South



-  **W-01445A (40)(4)**
Arizona Water Company (Coolidge)
-  **WS-02987A (8)**
Johnson Utilities, LLC
-  **(4)**
City of Florence (Nonjurisdictional)
-  **(2)**
Southwest Environmental Utilities, LLC
Docket No. WS-20878A-13-0065
(Amended Application for CC&N for Water & Wastewater)

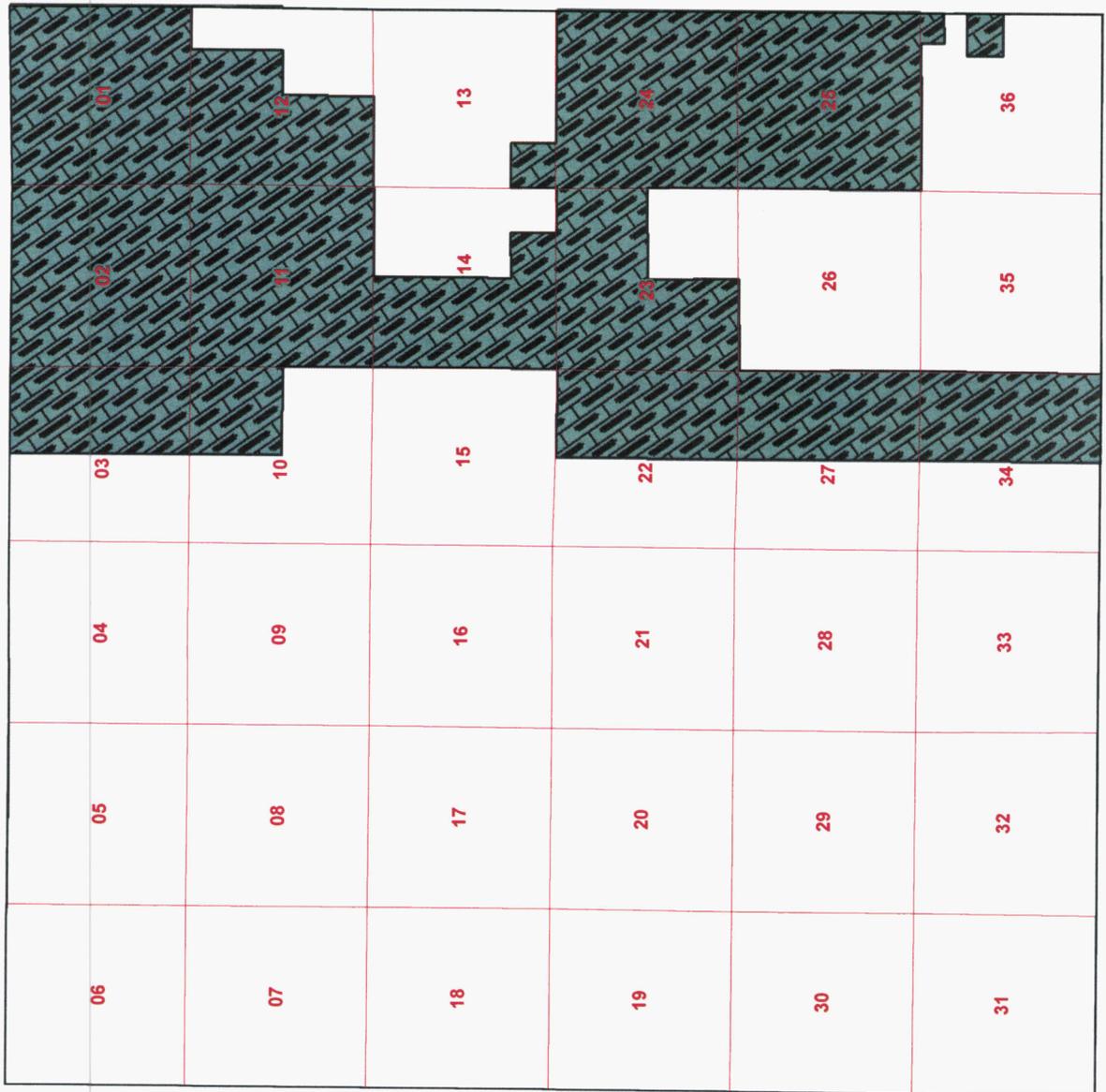
Johnson Utilities, LLC (Water and Sewer)
Docket No. WS-02987A-13-0477
Application for Cancellation
To Town of Florence



Prepared by:
Arizona Corporation Commission
Utilities Division
Engineering Section/GIS Mapping
602-542-4251

RANGE 8 East

TOWNSHIP 4 South



WS-02987A (8)

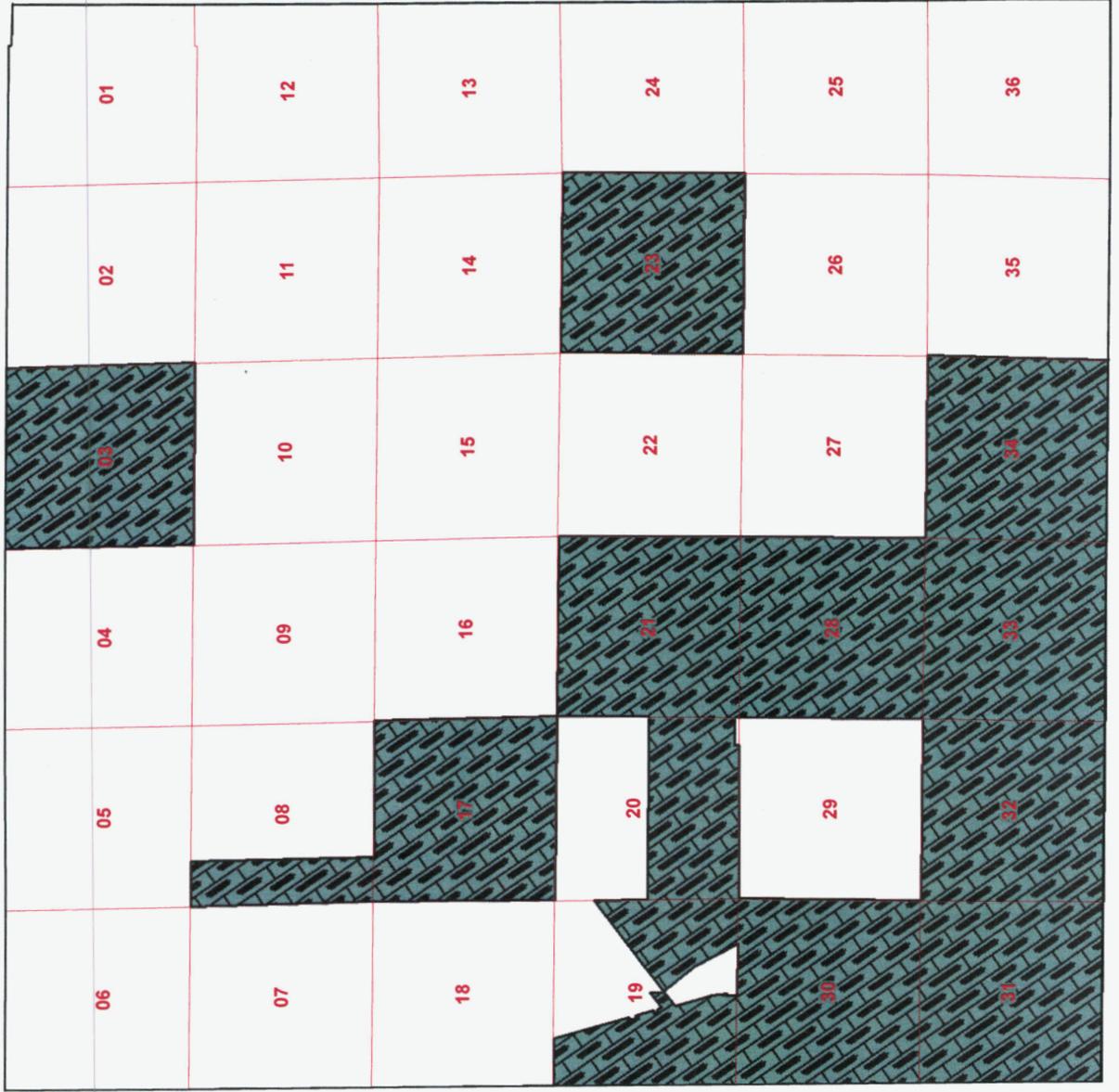
Johnson Utilities, LLC

Johnson Utilities, LLC (Water and Sewer)
Docket No. WS-02987A-13-0477
Application for Cancellation
To Town of Florence



Prepared by:
Arizona Corporation Commission
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602-542-4251

RANGE 9 East



WS-02987A (8)

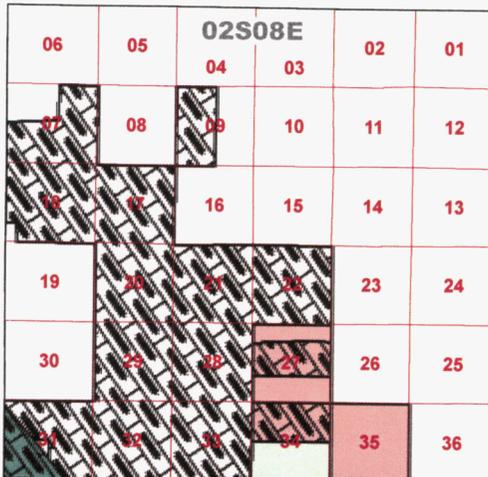
Johnson Utilities, LLC

TOWNSHIP 3 South

Johnson Utilities, LLC (Water and Sewer)
Docket No. WS-02987A-13-0477
Application for Cancellation
To Town of Florence



Prepared by:
Arizona Corporation Commission
Utilities Division
Engineering Section/GIS Mapping
602-542-4251



Water Providers

-  Sun Valley Farms Unit VI Water Company
-  Johnson Utilities, LLC
-  Diversified Water Utilities, Inc.
-  Arizona Water Company (Coolidge)

Sewer Providers

-  Johnson Utilities, LLC

Pending Applications

-  Johnson WS-02987A-13-0310
-  Johnson WS-02987A-13-0284
-  Johnson WS-02987A-12-0136
-  Johnson WS-02987A-12-0136

