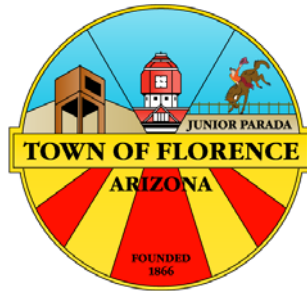


# TOWN OF FLORENCE SPECIAL MEETING AGENDA

Mayor Tara Walter  
Vice-Mayor Vallarie Woolridge  
Councilmember John Anderson  
Councilmember Becki Guilin  
Councilmember Bill Hawkins  
Councilmember Kristen Larsen  
Councilmember Karen Wall



Florence Town Hall  
775 N. Main Street  
Florence, AZ 85132  
(520) 868-7500  
[www.florenceaz.gov](http://www.florenceaz.gov)  
Meet 1<sup>st</sup> and 3<sup>rd</sup> Mondays

**Friday, September 7, 2018**

**4:30 PM**

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Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Town of Florence Council, that a Special Meeting of the Florence Town Council, will be held on Friday, September 7, 2018, at 4:30 p.m., in the Florence Town Council Chambers, located at 775 N. Main Street, Florence, Arizona. One or more members of the Town Council may attend telephonically. The agenda for this meeting is as follows:

**1. CALL TO ORDER**

**2. ROLL CALL:**

Walter \_\_, Woolridge\_\_, Hawkins\_\_, Guilin\_\_, Anderson\_\_, Wall\_\_\_\_, Larsen\_\_\_\_\_.

**3. CALL TO THE PUBLIC**

Call to the Public for public comment on issues within the jurisdiction of the Town Council. Council rules limit public comment to three minutes. Individual Councilmembers may respond to criticism made by those commenting, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of the Council shall not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

**4. ADJOURN TO EXECUTIVE SESSION**

Discussion and possible action to authorize the holding of an Executive Session during the Council Meeting for the purposes of discussions or consultations with designated representatives of the public body and/or legal counsel pursuant to A.R.S. Sections 38-431.03 (A)(3) and (A)(4) to consider its position and instruct its representatives and/or attorneys regarding:

- a. The modification, reduction, deletion and/or revocation of Certificates of Convenience and Necessity for Johnson Utilities, and any other Arizona Corporation Commission regulated entities with a relation to Johnson Utilities, including but not limited to Southwest Environmental Utilities.

- b. Possible contract negotiations and discussions related to water credits and Greenstone Water Credits, LLC.

**5. ADJOURN FROM EXECUTIVE SESSION**

**6. NEW BUSINESS**

- a. **Resolution No. 1678-18:** Discussion/Approval/Disapproval of RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER AND THE ATTORNEYS FOR THE TOWN OF FLORENCE TO SEEK THE MODIFICATION, AND IF POSSIBLE, THE REDUCTION AND/OR DELETION AND REVOCATION OF THE CERTIFICATES OF CONVENIENCE AND NECESSITY (CC&N) FOR JOHNSON UTILITIES AND ANY OTHER REGULATED ENTITIES WITH A RELATION TO JOHNSON UTILITIES (INCLUDING, BUT NOT LIMITED TO, SOUTHWEST ENVIRONMENTAL UTILITIES) FROM THE ARIZONA CORPORATION COMMISSION; AUTHORIZING THE FULL PROSECUTION OF ANY RELATED APPEALS, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.

**7. CALL TO THE PUBLIC**


**8. CALL TO THE COUNCIL – CURRENT EVENTS ONLY**

**9. ADJOURNMENT**

Council may go into Executive Session at any time during the meeting for the purpose of obtaining legal advice from the Town's Attorney(s) on any of the agenda items pursuant to A.R.S. § 38-431.03(A)(3).

**AGENDA POSTED ON SEPTEMBER 6, 2018 BY LISA GARCIA, TOWN CLERK, AT 775 NORTH MAIN STREET, FLORENCE, ARIZONA, AND AT [WWW.FLORENCEAZ.GOV](http://WWW.FLORENCEAZ.GOV).**

**\*\*\*PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), THE TOWN OF FLORENCE DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY REGARDING ADMISSION TO PUBLIC MEETINGS. PERSONS WITH A DISABILITY MAY REQUEST REASONABLE ACCOMMODATIONS BY CONTACTING THE TOWN OF FLORENCE ADA COORDINATOR, AT (520) 868-7574 OR (520) 868-7502 TDD. REQUESTS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATION.\*\*\***

	<b>TOWN OF FLORENCE COUNCIL ACTION FORM</b>	<b><u>AGENDA ITEM</u></b> <b>6a.</b>
<b>MEETING DATE:</b> September 7, 2018  <b>DEPARTMENT:</b> Administration  <b>STAFF PRESENTER:</b> Brent Billingsley, Town Manager  <b>SUBJECT:</b> Resolution No. 1678-18; Town's application seeking the modification, reduction and/or deletion and revocation of the Certificate of Convenience and Necessity (CC&N) for Johnson Utilities and related entities (including Southwest Environmental Utilities, L.L.C.)		<input checked="" type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Public Hearing</b> <input checked="" type="checkbox"/> <b>Resolution</b> <input type="checkbox"/> <b>Ordinance</b> <input type="checkbox"/> <b>Regulatory</b> <input type="checkbox"/> <b>1<sup>st</sup> Reading</b> <input type="checkbox"/> <b>2<sup>nd</sup> Reading</b> <input type="checkbox"/> <b>Other</b>
<b>STRATEGIC PLAN REFERENCE:</b> <input type="checkbox"/> Community Vitality <input checked="" type="checkbox"/> Economic Prosperity <input checked="" type="checkbox"/> Leadership and Governance <input type="checkbox"/> Partnership and Relationships <input type="checkbox"/> Transportation and Infrastructure <input type="checkbox"/> Statutory <input type="checkbox"/> None		

**RECOMMENDED MOTION/ACTION:**

Motion to adopt Resolution No. 1678-18: RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER AND THE ATTORNEYS FOR THE TOWN OF FLORENCE TO SEEK THE MODIFICATION, AND IF POSSIBLE, THE REDUCTION AND/OR DELETION AND REVOCATION OF THE CERTIFICATES OF CONVENIENCE AND NECESSITY (CC&N) FOR JOHNSON UTILITIES AND ANY OTHER REGULATED ENTITIES WITH A RELATION TO JOHNSON UTILITIES (INCLUDING, BUT NOT LIMITED TO, SOUTHWEST ENVIRONMENTAL UTILITIES) FROM THE ARIZONA CORPORATION COMMISSION; AUTHORIZING THE FULL PROSECUTION OF ANY RELATED APPEALS, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.

**BACKGROUND/DISCUSSION:**

The Towns' of Florence and Queen Creek have intervened in multiple Arizona Corporation Commission (ACC) Dockets involving Johnson Utilities. The evidentiary record developed in Docket WS-02987A-18-0050 and Docket WS-02987A-18-0151, and the Commission's resulting orders in Decisions 76785 and 76834, conclusively demonstrate that Johnson Utilities cannot provide just,

reasonable, safe, proper, adequate, and sufficient water and wastewater services to its customers.

On December 17, 2015, the Commission granted a conditional CC&N to Southwestern Environmental Utilities, L.L.C (“SEU”). As SEU represented in the proceedings before the Commission, it is a sister company to Johnson Utilities. It is owned by the George H. Johnson Revocable Trust, George H. Johnson and Jana S. Johnson, Trustees. The original articles of incorporation identified George Johnson as manager. Contemporaneously with Mr. Johnson stepping aside as manager of Johnson Utilities in favor of Gary Drummond, he also stepped aside as manager of SEU in favor of Mr. Drummond.

In addition to the fact that SEU has the same management that the Commission found to be improper in Decision 76785, there are several additional factors that warrant deletion of the SEU CC&N:

1. The CC&N that SEU obtained is inconsistent with the development agreement that it entered into with the Town of Florence. The CC&N that SEU obtained includes land that it was not authorized by Florence to request and omits lands that should have been included to ensure orderly development.
2. The CC&N granted to SEU was conditioned on SEU meeting several conditions, which SEU has failed to do.
  - a. SEU failed to file a copy of the Aquifer Protection Permit within two years of the effective date of the decision.
  - b. SEU failed to file a copy of the ADEQ ATC within two years of the effective date of the decision.
  - c. SEU failed to file a copy of the DWR DAWS within two years of the effective date of the decision.
  - d. SEU failed to request an extension of time to provide these required filings.
3. According to the Decision, the consequence of each one of these failures is that the CC&N “shall be considered null and void after due process.”

In addition to the conditions that have not been met above, it has come to staff's attention that a Section 208 Amendment has not been approved for SEU to serve the area identified in the 2013 Operating Agreement.

**A VOTE OF NO WOULD MEAN:**

The Town would not pursue reduction, deletion or revocation of the existing CCNs for Johnson Utilities or Southwest Environmental Utilities.

**A VOTE OF YES WOULD MEAN:**

The Town would submit their Response to Commission Staff's August 31, 2018 Memorandum regarding Staff's “Evaluation of the Certificate of Convenience and

Necessity of Johnson Utilities LLC.” In addition, staff would submit the question of whether to delete Southwestern Environmental Utilities, L.L.C. be consolidated with and addressed as part of the docket established to evaluate Johnson Utilities’ CC&Ns.

**FINANCIAL IMPACT:**

The Town currently has Riley, Carlock, and Applewhite under contract for both the WS-02987A-18-0050 and WS-02987A-18-0151dockets.

**ATTACHMENTS:**

Resolution No. 1678-18

“Draft” Town of Florence and Town of Queen Creek’s Response to Commission Staff’s Memorandum.

**RESOLUTION NO. 1678-18**

**A RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER AND THE ATTORNEYS FOR THE TOWN OF FLORENCE TO SEEK THE MODIFICATION, AND IF POSSIBLE, THE REDUCTION AND/OR DELETION AND REVOCATION OF THE CERTIFICATES OF CONVENIENCE AND NECESSITY (CC&N) FOR JOHNSON UTILITIES AND ANY OTHER REGULATED ENTITIES WITH A RELATION TO JOHNSON UTILITIES (INCLUDING, BUT NOT LIMITED TO, SOUTHWEST ENVIRONMENTAL UTILITIES) FROM THE ARIZONA CORPORATION COMMISSION; AUTHORIZING THE FULL PROSECUTION OF ANY RELATED APPEALS, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.**

**WHEREAS**, an improperly managed wastewater collection and treatment system puts the public at risk for adverse health effects, including Johnson Utilities customers, commuters, business patrons and school children; and that the potential health impacts are not only limited to customers of the Johnson Utilities System but have the potential impact to the entire region; and

**WHEREAS**, the Town of Florence desires to protect the health, safety, and welfare of its citizens by taking the reasonable and necessary actions to prevent the negative impacts suffered by Johnson Utilities customers in the region; and

**WHEREAS**, the Town of Florence has approximately 2,900 homes (and 7,500 residents) that receive water and sewer service from Johnson Utilities; and

**WHEREAS**, the Arizona Corporation Commission has investigated recent and ongoing concerns within the Johnson Utilities system, specifically in regards to water pressure, outages, billing practices, and water quality issues; and

**WHEREAS**, through the course of many public hearings, the Arizona Corporation Commission issued conclusions of law, wherein Johnson Utilities was found to be in violation of multiple State statutes and codes; and

**WHEREAS**, the Arizona Corporation Commission determined that Johnson Utilities has failed to provide service and equipment that is safe, proper, adequate, or sufficient; and

**WHEREAS**, the Arizona Corporation Commission, after proper due process, issued "Decision 76785" (ACC Docket # WS-02987A-18-0050) to install an Interim Manager to assume operations of Johnson Utilities, L.L.C.; and

**WHEREAS**, the Florence Town Council hereby concurs with and incorporates herein the Findings of Fact and Conclusions of Law set forth in “Decision 76785”; and

**WHEREAS**, during the proceedings for ACC Docket # WS-02987A-18-0050, the Arizona Corporation Commission and its staff have filed testimony about other regulated entities that have a relation to Johnson Utilities; and

**WHEREAS**, Southwest Environmental Utility (“SEU”) was granted a CC&N (with conditions) in “Decision No. 75345” on December 17, 2015. The Decision states the SEU is owned by George H. Johnson and Mrs. Jana S. Johnson; and

**WHEREAS**, according to testimony filed in Docket # WS-02987A-18-0050, Arizona Corporation Commission Staff testified that SEU is currently out of compliance with “Decision No. 75345”; and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Town of Florence, Arizona, that:

Section 1. The execution, filing, delivery, and the full prosecution/litigation of the Town’s application seeking the modification, reduction and/or deletion and revocation of the Certificate of Convenience and Necessity (CC&N) for Johnson Utilities and related entities (including Southwest Environmental Utilities, L.L.C.), and notices, filings, certificates, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient related thereto, including any appeals (the “Application”), is approved and authorized.

Section 2. The Mayor, the Town Manager, the Attorneys for the Town and other officers of the Town, on behalf of the Town, are authorized and directed, without further order of the Mayor and Common Council of the Town, to do all such acts and things, including the full prosecution/litigation of the Application, and to execute, file and deliver all such notices, certificates, filings, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient to be executed, filed and delivered on behalf of the Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by, and as may be necessary to carry out the terms and intent of this Resolution.

Section 3. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the Town’s rights with respect to the Application as contemplated by this Resolution, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 4. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 5. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, by ensuring adequate water and wastewater services are provided to the region and the Town's residents, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Mayor and Common Council of the Town and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Florence, Arizona, and approved by the Mayor of the Town of Florence, Arizona, this 7th day of September, 2018.

\_\_\_\_\_  
Tara Walter, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lisa Garcia, Town Clerk

\_\_\_\_\_  
Clifford L. Mattice, Town Attorney

**CERTIFICATION**

I hereby certify that the foregoing Resolution No. 1678-18 was duly passed and adopted by the Mayor and Common Council of the Town of Florence, Arizona, at a council meeting held on the 7th day of September, 2018, and the vote was \_\_\_\_\_ ayes and \_\_\_\_\_ nays.

\_\_\_\_\_  
Lisa Garcia, Town Clerk



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

Tom Forese, Chairman  
Bob Burns  
Andy Tobin  
Boyd Dunn  
Justin Olson

IN THE MATTER OF THE  
COMMISSION'S INVESTIGATION OF  
THE BILLING AND WATER QUALITY  
ISSUES OF JOHNSON UTILITIES,  
LLC.

DOCKET NO. WS-02987A-18-0050

**TOWN OF FLORENCE'S AND  
TOWN OF QUEEN CREEK'S  
RESPONSE IN SUPPORT OF  
COMMISSION  
STAFF'S MEMORANDUM**

The Town of Florence and the Town of Queen Creek (the "Towns") hereby submit their Response to Commission Staff's August 31, 2018 Memorandum regarding Staff's "Evaluation of the Certificate of Convenience and Necessity of Johnson Utilities LLC."

The Towns fully support Staff's recommendation to determine whether CC&N held by Johnson Utilities, LLC ("JU") should be deleted, in part or in total. The evidentiary record developed in this Docket and Docket WS-02987A-18-0151, and the Commission's resulting orders in Decisions 76785 and 76834, incorporated by reference herein, conclusively demonstrate that JU cannot provide "just, reasonable, safe, proper, adequate, and sufficient" water and wastewater services to its captive customers. *See, e.g.*, Decision 76785 ¶¶ 128-131 at page 305, ¶ 13 at page 306. As further already held by the Commission:

Under A.R.S. § 40-321, when the Commission finds that the service or equipment of a public service corporation is unsafe, inadequate, or insufficient, the Commission has authority to determine appropriate remedies and enforce those remedies by order or regulation.

Decision 76785 ¶ 8 at page 306. The facts are established; only the issue of the proper remedy remains to be determined. The Towns provide the following comments for the Commission's consideration as it evaluates next steps.

1           **I.     The Towns support Staff’s recommendation to consider complete or partial**  
2           **revocation.**

3           Staff’s Memo identifies three potential outcomes that should be evaluated: 1) complete  
4           revocation of Johnson’s CC&N; 2) revocation in those areas that have no customers and no  
5           requests for services; or 3) revocation in areas with no customers or requests for services. The  
6           Towns agree that these three scenarios should be evaluated.

7           Attached as Exhibit A and B are maps that illustrate the areas (over 50 square miles or  
8           32,000 acres) of JU’s water and wastewater CC&Ns, respectively, that have no customers.  
9           Deleting these portions of the JU’s CC&Ns would be a significant first step in ensuring that JU’s  
10          problems grow no further. In fact, based upon the facts already established by the Commission’s  
11          prior Decisions, the Commission currently has more than sufficient basis to revoke JU’s  
12          monopoly over those undeveloped areas.

13           **II.    Queen Creek respectfully requests that its recently filed Applications to**  
14           **Amend JU’s CC&Ns be addressed separately from any new docket**  
15           **established to evaluate all of the JU’s CC&Ns.**

16          On August 22, 2018, Queen Creek filed applications to delete three largely undeveloped  
17          properties (the “Properties”) that are within the Company’s certificated wastewater service area,  
18          but are not currently served by JU. *see the Applications* attached hereto and incorporated herein  
19          by reference as Exhibit C. The Properties are located within Queen Creek’s water service area  
20          and the Properties’ owners have requested consolidated water and wastewater services from  
21          Queen Creek. Because the issues presented are narrow and the relevant facts developed, Queen  
22          Creek respectfully requests that these applications be addressed separately from any new docket  
23          established to evaluate all of the Company’s CC&Ns.

24           **III.   Florence requests that the question of whether to delete Southwestern**  
25           **Environmental Utilities, L.L.C. be consolidated with and addressed as part**  
26           **of the docket established to evaluate JU’s CC&Ns.**

27          On December 17, 2015, the Commission granted a conditional CC&N to Southwestern  
28          Environmental Utilities, L.L.C (“SEU”). As SEU represented in the proceedings before the  
29          Commission, it is a sister company to JU. See, e.g., Closing Brief of Southwest Environmental  
30          Utilities, L.L.C, June 12, 2015. It is owned by the George H. Johnson Revocable Trust, George  
31          H. Johnson and Jana S. Johnson, Trustees. See Exhibit D. The original articles of incorporation

1 identified George Johnson as manager. See Exhibit E. Contemporaneously with Mr. Johnson  
2 stepping aside as manager of JU in favor of Gary Drummond, he also stepped aside as manager  
3 of SEU in favor of Mr. Drummond. See Exhibit F.

4 In addition to the fact that SEU has the same management that the Commission found to  
5 be improper in Decision 76785, there are several additional factors that warrant deletion of the  
6 SEU CC&N:

- 7 1. The CC&N that SEU obtained is inconsistent with the Development Agreement that  
8 it entered into with the Town of Florence. The CC&N that SEU obtained includes  
9 land that it was not authorized by Florence to request, and omits lands that should  
10 have been included to ensure orderly development. Maps showing the area  
11 authorized by the Florence Development Agreement, the CC&N as obtained, and a  
12 comparison overlay, are attached as Exhibits G, H, and I, respectively.
- 13 2. The CC&N granted to SEU was conditioned on SEU meeting several conditions,  
14 which SEU has failed to do. See Decision 75345, attached as Exhibit J.
  - 15 a. SEU failed to file a copy of the Aquifer Protection Permit within two years of  
16 the effective date of the decision.
  - 17 b. SEU failed to file a copy of the ADEQ ATC within two years of the effective  
18 date of the decision.
  - 19 c. SEU failed to file a copy of the DWR DAWS within two years of the effective  
20 date of the decision.
  - 21 d. SEU failed to request an extension of time to provide these required filings.
- 22 3. According to the Decision, the consequence of each one of these failures is that the  
23 CC&N “shall be considered null and void after due process.”
- 24 4. SEU needs a Central Arizona Governments (“CAG”) 208 Water Quality Plan  
25 Amendment in order to provide service, and has yet to receive the same. See Email  
26 from Alan Urban dated June 6, 2018, and the attachments thereto, all of which are  
27 attached hereto and incorporated herein by reference as Exhibit K.
  - 28 a. SEU submitted a draft amendment application to CAG in 2015. *Id.*

1 b. It was suggested that draft application be provided to the Town of Florence  
2 for consideration because the majority of the area was within the Town of  
3 Florence’s DMA. *Id.*

4 c. The draft amendment application was never revised or ultimately submitted  
5 back to CAG for consideration. *Id.*

6 d. Consequently, SEU cannot presently provide services because it has not  
7 received 208 approval from CAG.

8 For these reasons and many more, the Commission should deem the SEU CC&N null  
9 and void, as expressly ordered by the Commission in Decision 75345. Whether considered  
10 together with JU’s CC&Ns, or separately, the Commission need do nothing more than enforce  
11 its existing Decision 75345.

12  
13 **IV. Subsequent evidentiary hearings should be very narrowly tailored and rely  
on the extensive record in this docket and Docket WS-02987A-18-0151.**

14 The facts and reasons supporting the revocation of JU’s CC&Ns, and determination that  
15 SEU’s CC&N is null and void, are already set forth in Decisions 76785 and 76834, incorporated  
16 by reference herein, and the Pinal County Superior Court’s Order granting the Commission’s  
17 Request for Preliminary Injunction/Temporary Restraining Order, filed in this docket at  
18 <http://docket.images.azcc.gov/0000191682.pdf>.

19 The Commission’s extensive and fully supported factual and legal findings in Decision  
20 No. 76785 and 76834, are fully binding upon JU’s ownership and management. Arizona law is  
21 well established that the legal doctrine of issue preclusion (previously “collateral estoppel”)  
22 precludes every claim, *fact and legal issue actually litigated and resolved in a prior proceeding*,  
23 regardless of how a losing party attempts to “repackage” them. *Baier v. Mayer Unified School*  
24 *Dist.*, 224 Ariz. 433, 440, ¶ 21 (App. 2010). The *Restatement (Second) of Judgments* § 27, as  
25 adopted in Arizona, provides:

26 When an issue of **fact or law is actually litigated and determined** by a valid and  
27 final judgment, **the determination is conclusive on a subsequent action between**  
28 **the parties**, whether on the same or a different claim. (Emphasis added).

1 *See Bridgestone/Firestone North America Tire, LLC v. Naranjo*, 206 Ariz. 447, 452, ¶ 19 (App.  
2 2003) (citing *Restatement* § 27 in affirming grant of summary judgment).

3 Thus, for example, if the party against whom preclusion is sought did in fact  
4 litigate an issue of ultimate fact and suffered an adverse determination, **new**  
5 **evidentiary facts may not be brought forward to obtain a different**  
6 **determination of that ultimate fact.** (Emphasis added).

6 *Restatement* § 27, comment c. Issue preclusion applies to administrative determinations of fact  
7 and law where those issues were actually litigated. *See, e.g., J.W. Hancock Enterprises, Inc. v.*  
8 *Arizona State Registrar of Contractors*, 142 Ariz. 400, 409-10, 690 P.2d 119, 128-29 (App.  
9 1984) (affirming trial court's refusal to hear additional evidence on issues actually litigated in  
10 ROC hearing).

11 JU's ownership and management have had ample opportunity to make the case that they  
12 were capable of providing just, reasonable and safe service. They were unable to do so.  
13 Accordingly, any subsequent proceedings should be narrowly focused and not relitigate the  
14 extensive record developed in this Docket and Docket WS-02987A-18-0151, and the  
15 Commission's resulting decisions.

### 16 Conclusion

17 The Towns strongly support the Staff Memorandum. As set forth herein, to the limited  
18 extent any additional proceedings are necessary in light of the Commission's existing findings  
19 of fact, conclusions of law, and Decisions, it is in the public interest to hold expeditious, focused  
20 proceedings to evaluate whether to delete JU's CC&Ns, in whole or in part, so that the property  
21 owners, developers and residents of the Southeast Valley Region may finally have certainty that  
22 they can live in, and develop areas, that are or will be served by competent, just, reasonable,  
23 responsible, and safe water and wastewater services.

24 RESPECTFULLY SUBMITTED this \_\_\_ day of September 2018.

25 TOWN OF FLORENCE

26 By:

27 \_\_\_\_\_  
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*Attorneys for the Town of Florence and the  
Town of Queen Creek*

ORIGINAL and 13 copies filed  
this \_\_\_ day of September 2018, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

COPIES of the foregoing mailed/mailed  
this \_\_\_ day of September 2018 to:

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**Consented to Service by Email**

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