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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

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US EPA - REGION IX  
HEARING CLERK

IN THE MATTER OF:	)	
	)	DOCKET NO.: SDWA-09-2008-0001
ARIZONA WINDSONG WATER COMPANY	)	
	)	
Respondent.	)	
	)	DATED: October 15, 2014
	)	
PWS ID# AZ0401009	)	
	)	
	)	
	)	

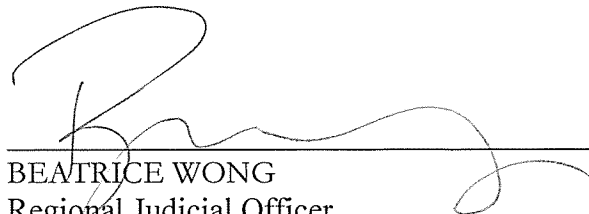
FINAL ORDER GRANTING APPROVAL OF CONSENT AGREEMENT

By written motion, filed October 10, 2014, Complainant, the United States Environmental Protection Agency (EPA) sought approval of the parties' Consent Agreement and issuance of a Final Order to resolve the instant matter.

**IT IS HEREBY ORDERED THAT:**

1. EPA's motion for approval of the Consent Agreement and issuance of a Final Order is GRANTED.
2. The Consent Agreement between EPA and Respondent, Arizona Windsong Water Company, and this Final Order for this matter, EPA Docket No. SDWA-09-2008-0001, shall be ENTERED;
3. Respondent, Arizona Windsong Water Company, shall comply with the requirements set forth in the Consent Agreement, incorporated by reference in this Final Order, which becomes final and effective on the date this Final Order is filed with the EPA Region 9 Regional Hearing Clerk.

Dated: October 15, 2014

  
 \_\_\_\_\_  
 BEATRICE WONG  
 Regional Judicial Officer

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1 SYLVIA QUAST  
Regional Counsel  
2 United States Environmental Protection Agency, Region 9

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3 RICH CAMPBELL  
Assistant Regional Counsel  
4 United States Environmental Protection Agency, Region 9  
5 75 Hawthorne Street  
San Francisco, California 94105  
6 (415) 972-3870

US EPA - REGION IX  
HEARING CLERK

7 Attorneys for Complainant

8  
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 9**

10 In the Matter of:

) Docket No. SDWA-09-2008-0001

11  
12 **Arizona Windsong Water Company**

) **CONSENT AGREEMENT**

13  
14 Respondent.

) ~~AND PROPOSED FINAL ORDER~~ *BW*  
*10/15/14*

15 Proceedings Under Section 1414(g) of the Safe  
16 Drinking Water Act, 42 U.S.C. § 300g-3(g).  
17  
18

19 **CONSENT AGREEMENT**

20 1. Arizona Windsong Water Company (“Respondent”) and the Environmental  
21 Protection Agency (“Complainant”) seek approval of their agreement to settle this proceeding  
22 pursuant to 40 C.F.R. § 22.18(b), and move for issuance of the accompanying Proposed Final  
23 Order. Respondent and Complainant (the “Parties”) agree that settlement of the relevant matters  
24 without litigation will save time and resources, that it is in the public interest, that it is consistent  
25 with the provisions and objectives of the federal Safe Drinking Water Act (“SDWA”) and

1 applicable regulations, and that entry of this Consent Agreement and Proposed Final Order  
2 (“CA/FO”) is the most appropriate means of resolving such matters.

3 **Respondent’s Admissions**

4 2. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
5 Respondent (a) admits that Complainant has jurisdiction over the subject matter of this CAFO  
6 and over Respondent; (b) admits the jurisdictional allegations contained in the attached  
7 “Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil  
8 Penalty, and Notice of Opportunity to Request a Hearing Thereon” (“Complaint”), Docket No.  
9 SDWA-09-2008-0001; (c) neither admits nor denies any other allegation, finding of fact, or  
10 conclusion of law asserted by Complainant; and (d) waives any right to contest the  
11 Complainant’s allegations or the right to appeal the Proposed Final Order.

12 **Civil Administrative Penalty**

13 3. After taking into consideration the seriousness of the alleged violations, the population at  
14 risk, and other appropriate factors, EPA has determined that it is appropriate to assess, and  
15 Respondent has agreed to pay to the United States, a civil administrative penalty in the amount  
16 of one thousand dollars (**\$1,000.00**).

17 4. Payment of penalty must be received on or before thirty (90) calendar days after the  
18 effective date of the CA/FO. The date by which payment must be received by the United States  
19 shall be the “due date” for the payment.

20 5. Respondent shall make payment under this CA/FO in accordance with any of the  
21 acceptable methods of payment listed in **Exhibit A**, “EPA Region 9 Collection Information,”  
22 which is incorporated by reference as part of this CA/FO. Concurrent with payment of the  
23 penalty, Respondent shall provide written notice of payment, referencing the title and docket  
24 number of this case and attach a photocopy of the penalty payment, via certified mail to each of  
25 the following:

1 Regional Hearing Clerk  
2 EPA Region 9  
3 75 Hawthorne Street (mail code: ORC-1)  
4 San Francisco, California, 94105

5 and

6 Patrick Chan  
7 SDWA/FIFRA Enforcement Office  
8 Enforcement Division, EPA Region 9  
9 75 Hawthorne Street (ENF-3-3)  
10 San Francisco, CA 94105  
11 415-972-3551 (office phone)

12 6. If the penalty is not paid when due, interest shall accrue on any overdue amount from the  
13 first date after the due date through the date of payment, at the interest rate established by the  
14 Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge  
15 of fifteen dollars (\$15.00) will be assessed for each thirty-(30) day period (or any portion  
16 thereof) following the due date in which the balance remains unpaid. Payment of any interest  
17 and late handling charges shall be made in accordance with paragraph 5 above.

18 7. Failure by Respondent to pay the penalty in full according to the above provisions will  
19 result in referral of this matter to the United States Department of Justice or the United States  
20 Department of the Treasury for collection.

21 8. Respondent shall not deduct the civil penalty, or any interest, late penalty payment and  
22 administrative handling fees, from its federal, state or local income taxes.

### 23 **Retention of Rights**

24 9. In accordance with 40 C.F.R. § 22.18(c), this CA/FO serves to resolve Respondent's  
25 liability for federal civil penalties for the violations and facts specifically alleged in the attached  
Complaint. Nothing in this CA/FO is intended to or shall be construed to resolve (i) any civil  
liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
ordinance, or permit not specifically alleged in the attached Complaint; or (ii) any criminal  
liability. EPA specifically reserves any and all authorities, rights, and remedies available to it

1 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
2 any violation of this CA/FO or any violation not specifically alleged in the attached Complaint.

3 10. This CA/FO shall not affect Respondent's obligation to comply with all applicable  
4 federal, state, local laws, ordinances, regulations, permits, and orders.

5 11. This Consent Agreement may be executed and transmitted by facsimile, email or other  
6 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all  
7 of which shall constitute one instrument. If any portion of this Consent Agreement is determined  
8 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining  
9 portions shall remain in full force and effect. This is the Parties' complete agreement concerning  
10 the subject matter hereof, and no modification of this Consent Agreement shall be valid or  
11 binding unless the same be in a signed writing of the Parties

12 12. This CA/FO shall in no way affect the right of EPA or the United States against  
13 any third party (person/entity not a party to this CA/FO) or the right of any third party against  
14 Respondent. This CA/FO does not create any right in or grant any cause of action to any third  
15 party.

16 **Attorneys' Fees and Costs**

17 13. Unless otherwise specified, the Parties shall each bear their own costs and attorneys fees  
18 incurred in this proceeding.

19 **Binding Effect**

20 14. This CA/FO shall be binding upon Respondent, its officers, directors, agents, servants,  
21 employees, successors, assigns and subsequent purchasers. Changes in ownership, including but  
22 not limited to any transfer of assets of real or personal property, shall not alter Respondent's  
23 status or responsibilities under this CA/FO.

24 15. The undersigned representative of each of the Parties certifies that he or she is fully  
25 authorized to execute and legally bind that party to this CA/FO.

**Effective and Termination Dates**

16. This CA/FO shall take effect on the date the Final Order is filed with EPA Region 9's Regional Hearing Clerk, and shall terminate when Respondent has complied with this CA/FO in full.


CONSENTING PARTIES:

For Respondent Arizona Windsong Water Company:

By:   
Lillie Paulsell

Date: 9/26/14, 2014

For Complainant U.S. Environmental Protection Agency, Region 9:

By:  for KJ  
Kathleen Johnson, Director  
Enforcement Division

Date: 10/10/14, 2014

1 **EXHIBIT A**

2 In the Matter of  
3 Arizona Windsong Water Company  
4 EPA Docket No. SDWA-09-2008-0001

5 **EPA REGION 9 COLLECTION INFORMATION:**

6 The civil penalty shall be paid by remitting a certified or cashier's check, including the name and  
7 docket number of this case, for the amount, payable to "Treasurer, United States of America,"  
8 (or be paid by one of the other methods listed below) and sent as follows:

9 Regular Mail:

10 U.S. Environmental Protection Agency  
11 Fines and Penalties  
12 Cincinnati Finance Center  
13 PO Box 979077  
14 St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with  
17 the following information:  
18 Federal Reserve Bank of New York  
19 ABA = 021030004  
20 Account = 68010727  
21 SWIFT address = FRNYUS33  
22 33 Liberty Street  
23 New York, NY 10045  
24 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
25 Protection Agency"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency

1 Account 31006  
2 CTX Format

3 On Line Payment:

4 This payment option can be accessed from the information below:

5 [www.pay.gov](http://www.pay.gov)

6 Enter "sfo1.1" in the search field

7 Open form and complete required fields

8 **If clarification regarding a particular method of payment remittance is needed,**  
9 **contact the EPA Cincinnati Finance Center at 513-487-2091.**

10 A copy of each check, or notification that the payment has been made by one of the other  
11 methods listed above, including proof of the date payment was made, shall be sent with a  
12 transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

13 a) Regional Hearing Clerk  
14 Office of Regional Counsel (ORC-1)  
15 U.S. Environmental Protection Agency, Region 9  
16 75 Hawthorne Street  
17 San Francisco, California 94105

18 b) Patrick Chan  
19 SDWA/FIFRA Enforcement Office  
20 Enforcement Division, EPA Region 9  
21 75 Hawthorne Street (ENF-3-3)  
22 San Francisco, CA 94105  
23 415-972-3551 (office phone)  
24  
25



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**ATTACHMENT**

In the Matter of:

Arizona Windsong Water Company

EPA Docket No. SDWA-09-2008-0001

Administrative Complaint,

Findings of Violation,

Notice of Proposed Assessment of a Civil Penalty, and

Notice of Opportunity to Request a Hearing Thereon

EPA Docket No. SDWA-09-2008-0001



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Via Certified Mail : 7000 1670 0009 3122 7063  
Pat Paulsell, Owner and Operator  
Arizona Windsong Water Company  
P.O. Box 261  
Sanders, AZ 86512

**Re: Arizona Windsong Water Company  
Administrative Complaint and Notice of Opportunity for a Hearing  
(EPA Docket No. SDWA-09-2008-0001)**

Dear Mr. Paulsell:

You are served the enclosed Administrative Complaint ("Complaint") by the U.S. Environmental Protection Agency Region 9 ("EPA") for the failure of Arizona Windsong Water Company ("Arizona Windsong") to comply with the Administrative Order issued by EPA on March 25, 2005 for violations of the federal Safe Drinking Water Act ("SDWA"). Pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the enclosed Complaint requests that a penalty of up to \$27,500 be assessed.

To avoid entry of a Default Order against Arizona Windsong for this penalty, you must file a written Answer with the Regional Hearing Clerk at the address provided in the Complaint within 30 days of receiving this Complaint.

You may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, please contact Rich Campbell in our Office of Regional Counsel at the above address, or by phone at (415) 972-3870. I understand you have already been in contact with Mr. Campbell.

Sincerely,

  
Alexis Strauss, Director 11 Sept. 2008  
Water Division

Encl.

cc: Cynthia Campbell, Manager, Water Quality Enforcement Section, ADEQ,  
Phoenix, AZ

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REGIONAL HEARING CLERK

1 NANCY MARVEL  
Regional Counsel  
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL  
Assistant Regional Counsel  
4 United States Environmental Protection Agency, Region 9  
5 75 Hawthorne Street  
San Francisco, California 94105  
6 (415) 972-3870

7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
9 **REGION 9**

10 IN THE MATTER OF:

) DOCKET NO. SDWA-09-2008-0001

11 )  
12 ) Arizona Windsong Water Company,

13 ) Respondent.

) **COMPLAINT AND**  
) **NOTICE OF OPPORTUNITY**  
) **FOR HEARING**

14 )  
15 ) PWS ID#AZ0401009  
16 ) Proceedings under Section 1414(g) of the Safe  
Drinking Water Act, 42 U.S.C. § 300g-3(g)

17 **COMPLAINT**

18  
19 This civil administrative Complaint and Notice of Opportunity for Hearing (“Complaint”)  
20 is issued to the Arizona Windsong Water Company (“Respondent”) pursuant to the authority  
21 vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by  
22 Section 1414(g)(3) of the Safe Drinking Water Act, as amended (“SDWA”), 42 U.S.C. § 300g-  
23 3(g)(3). The Administrator has delegated the authority to issue this Complaint to the Regional  
24 Administrator for EPA Region 9, who in turn has delegated the authority to the Director of the  
25 Water Division for EPA Region 9, hereinafter referred to as “Complainant.”

In re: Arizona Windsong Water Company  
Complaint and Notice of Opportunity for Hearing

1 This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the  
2 Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40  
3 C.F.R. Part 22 ("Consolidated Rules of Practice") (**Exhibit 1**).

4 **GENERAL ALLEGATIONS**

5 Each allegation in this Complaint has applied at all relevant times unless otherwise stated.

6 1. Respondent Arizona Windsong Water Company is an Arizona corporation and therefore  
7 a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and  
8 40 C.F.R. § 141.2.

9 2. The Respondent owns and/or operates a water system known to EPA as the Arizona  
10 Windsong Water Company water system (the "System") located in Apache County, Arizona, for  
11 the provision to the public of piped water for human consumption.

12 3. The System provides water for human consumption to the public through pipes to at least  
13 76 service connections that regularly serve approximately 380 year-round residents, and is a  
14 "public water system" as defined by Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40  
15 C.F.R. § 141.2.

16 4. The System is a public water system that serves at least 15 service connections used by  
17 year-round residents of the area served by the system, and regularly serves at least 25 year-round  
18 residents, and is therefore a "community water system" as defined by Section 1401(15) of the  
19 SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

20 5. The System serves 3,300 persons or fewer and is a "small water system" as defined by 40  
21 C.F.R. § 141.2, for the purpose of the Lead and Copper Rule at 40 C.F.R. Part 141, Subpart I.

22 6. As the owner and/or operator of the System, Respondent is a "supplier of water" as  
23 defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2

24 Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g *et*  
25

1 *seq.*, and its implementing regulations at 40 C.F.R. Part 141 (also known as the “National  
2 Primary Drinking Water Regulations” or “NPDWRs”).

3 7. The source of the System’s water is a ground water well.

4 8. On March 25, 2005, EPA issued an Administrative Order (the “Order”), Docket No.  
5 PWS-AO-2005-002, to the Respondent pursuant to Section 1414(g) of the SDWA, 42 U.S.C. §  
6 300g-3(g), citing violations of the SDWA’s NPDWRs. (**Exhibit 2.**) The effective date of the  
7 Order was March 30, 2005. The Order required the Respondent, among other things, to achieve  
8 compliance with certain SDWA regulations, in accordance with specified deadlines.

9 9. By letter dated April 10, 2007, EPA notified the Respondents that they were in violation  
10 of the Order. (**Exhibit 3.**)

### 11 SPECIFIC ALLEGATIONS

12 10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

13 11. Following EPA’s issuance of the March 25, 2005 Order, Respondent failed to comply  
14 with the requirements of the Order as follows:

15 Count 1: Failure to conduct total coliform monitoring.

16 12. The Order (pgs. 6-7, paragraph 41) required Respondent to commence monitoring for  
17 total coliforms on a monthly basis in accordance with 40 C.F.R. § 141.21(a) within ten days of  
18 the effective date of the Order.

19 13. After consulting with the State, neither the State nor EPA has received any data from  
20 Respondent indicating Respondent commenced monthly monitoring of total coliform within ten  
21 days of the Order’s effective date on March 30, 2005 (*i.e.*, by April 10, 2005), or any time  
22 thereafter, in violation of the Order (pgs. 6-7, paragraph 41).

1 Count 2: Failure to conduct lead and copper monitoring.

2 14. The Order (pgs. 7-8, paragraphs 45-46) required Respondent to complete two  
3 consecutive six-month rounds of monitoring for lead and copper, in accordance with 40 C.F.R. §  
4 141.86, by December 10, 2006.

5 15. After consulting with the State, neither the State nor EPA has received any data from  
6 Respondent indicating that it conducted two consecutive six-month rounds of monitoring for lead  
7 and copper by December 10, 2006, or at any time thereafter, in violation of the Order (pgs. 7-8,  
8 paragraphs 45-46).

9 Count 3. Failure to Report Monitoring Violations.

10 16. The Order (pg. 8, paragraph 47) required that Respondent comply upon the effective date  
11 of the Order, and at all times thereafter with the violation reporting requirements of 40 C.F.R. §  
12 141.31(b) by reporting to EPA and the State of Arizona within 48 hours any failure to comply  
13 with the NPDWRs (including monitoring requirements).

14 17. After consulting with the State, neither the State nor EPA has received any data from  
15 Respondent indicating that it complied with the 48-hour reporting requirements of 40 C.F.R. §  
16 141.31(b) after Respondent failed to conduct the monthly total coliform monitoring required by  
17 40 C.F.R. § 141.21(a), and lead and copper monitoring required by 40 C.F.R. § 141.86, after the  
18 effective date of the Order on March 30, 2005, in violation of the Order (pg. 8, paragraph 47).

19 Count 4: Failure to issue Consumer Confidence Report.

20 18. The Order (pg. 9, paragraphs 48-49) required Respondent to prepare and issue a single  
21 CCR to its water customers July 1, 2005 summarizing drinking water information from 2001  
22 through 2004.

23 19. After consulting with the State, neither the State nor EPA has received any data from  
24 Respondent indicating that it issued a CCR to its water customers by July 1, 2005, or any time  
25

1 thereafter, summarizing drinking water information from 2001 through 2004, in violation of the  
2 Order (pg. 9, paragraphs 48-49).

3 Count 5: Failure to provide public notice of violations of 40 C.F.R. Part 141 specified in  
4 the Order.

5 20. The Order (pg. 9, paragraph 51) required Respondent to issue public notices for the total  
6 coliforms, nitrate, and lead and copper monitoring violations, which had occurred prior to  
7 issuance of the Order, within thirty days of the effective date of the Order.

8 21. After consulting with the State, neither the State nor EPA has received any data from  
9 Respondent that it issued public notices for the total coliforms, nitrate, and lead and copper  
10 monitoring violations that had occurred prior to issuance of the Order, by April 29, 2005 (i.e.,  
11 thirty days of the Order's effective date of March 30, 2005), or any time thereafter, in violation  
12 of the Order (pg. 9, paragraph 51).

13 Count 6: Failure to provide public notice of violations of 40 C.F.R. Part 141 after the  
14 effective date of the Order.

15 22. The Order (pg. 9, paragraph 51) required Respondent to comply within thirty days of the  
16 effective date of the Order, and at all times thereafter, with the public notification requirements  
17 of the Revised Public Notice Rule at 40 C.F.R. Part 141, Subpart Q.

18 23. After consulting with the State, neither the State nor EPA has received any data from  
19 Respondent that it provided public notice of the following violations that occurred after the  
20 Order's effective date of March 30, 2005: (a) failure to conduct two consecutive six-month  
21 rounds of monitoring for lead and copper in accordance 40 C.F.R. § 141.82; and (b) failing to  
22 monitor for total coliform on a monthly basis in accordance with 40 C.F.R. § 141.21(a), in  
23 violation of the Order (pg. 9, paragraph 51).

24 24. Pursuant to Section 1414(g)(2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), EPA has  
25 provided the State of Arizona with an opportunity to confer with EPA regarding this Complaint.

1 **PROPOSED ADMINISTRATIVE CIVIL PENALTY**

2 25. Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), and the Civil Monetary  
3 Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, authorizes the Administrator of the  
4 EPA to assess an administrative civil penalty, not exceeding \$27,500, against any person who  
5 violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the  
6 SDWA, 42 U.S.C. § 300g-3(g)(1).

7 26. Pursuant to Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), and the  
8 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. §§ 19.1-19.4, and in accordance  
9 with the enclosed Consolidated Rules of Practice, EPA hereby requests that a civil penalty of up  
10 to \$27,500 be assessed against Respondent for violations of the Order issued pursuant to Section  
11 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1).

12 27. In accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3, and 40 C.F.R. §  
13 22.14(a), EPA took into consideration the seriousness of the violations, the population at risk,  
14 and other appropriate factors, including the severity of each violation, in its determination of the  
15 proposed penalty. In considering these factors, among other things, Complainant evaluated the  
16 economic benefit to Respondent in failing to comply with the SDWA, the gravity and severity of  
17 each violation (children are particularly susceptible to the adverse health effects of lead and  
18 nitrate in drinking water), the service population of the System, the duration of violation,  
19 Respondent's history of non-compliance, and other considerations. Respondent ignored repeated  
20 requests and orders by ADEQ and EPA to come into compliance with the SDWA and the  
21 requirements of the Lead and Copper Rule and the Revised Public Notice Rule, and other SDWA  
22 requirements, and has failed to comply with these requirements as of the date of this Complaint.  
23 Respondent's history of disregarding requirements of the SDWA and its regulations has provided  
24 significant economic benefit to Respondent and placed Respondent's customers at risk of  
25 exposure to elevated levels of total coliforms, lead, and copper in their drinking water.



1                    **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

2            28. The rules of procedure governing this administrative litigation are set forth in the  
3 attached Consolidated Rules of Practice, which is codified at 40 C.F.R. Part 22. This proceeding  
4 will be conducted in accordance with the Consolidated Rules of Practice, including Subpart I,  
5 unless Respondent requests in the Answer a hearing on the record in accordance with Section  
6 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554, in which case Subpart I of the  
7 Consolidated Rules of Practice will not apply.

8                                **ANSWERING THE COMPLAINT**

9            29. If Respondent intends to contest any material fact upon which the Complaint is based, or  
10 to contend that the proposed penalty is inappropriate or that Respondent is entitled to judgment  
11 as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA Region IX  
12 both an original and one copy of a written Answer to the Complaint. 40 C.F.R. § 22.15(a). Such  
13 Answer must be filed within thirty days after service of this Complaint. 40 C.F.R. § 22.15(a).

14 The address of the Regional Hearing Clerk of EPA Region IX is:

15                               Danielle Carr  
16                               Regional Hearing Clerk  
17                               U.S. Environmental Protection Agency, Region IX  
                                  75 Hawthorne Street (ORC-1)  
                                  San Francisco, CA 94105

18 Respondent must also serve a *copy* of the Answer to the Complaint upon EPA, to the person and  
19 address listed in Paragraph 43 below, as required by 40 C.F.R. § 22.15(a).

20            30. Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain  
21 each of the factual allegations contained in the Complaint with regard to which Respondent has  
22 any knowledge. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge of a particular  
23 factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §  
24 22.15(b). If Respondent fails in its Answer to admit, deny, or explain any material factual  
25

1 allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40  
2 C.F.R. § 22.15(d).

3 31. The Answer must also state: (1) the circumstances or arguments that are alleged to  
4 constitute the grounds of any defense, (2) the facts that Respondent disputes (and thus intends to  
5 place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether  
6 Respondent requests a hearing. 40 C.F.R. § 22.15(b).

7 32. Respondent's failure to affirmatively raise facts in the Answer that might constitute the  
8 grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from  
9 raising such facts and/or from having such facts admitted into evidence at a hearing.

#### 10 **OPPORTUNITY TO REQUEST A HEARING**

11 33. If requested by Respondent in the Answer, a hearing upon the issues raised by the  
12 Complaint and Answer may be held. 40 C.F.R. § 22.15(c). Any hearing in this proceeding will  
13 be held at a location determined in accordance with 40 C.F.R. § 22.21(d).

14 34. Respondent has the right to elect a hearing on the record in accordance with Section 554  
15 of the APA, 5 U.S.C. § 554. 40 C.F.R. § 22.42(b). If Respondent does not request such a hearing,  
16 then Respondent waives the right to this hearing. Id.

17 35. If Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R.  
18 § 22.3) may still hold a hearing if the Answer raises issues appropriate for adjudication. 40  
19 C.F.R. § 22.15(c).

#### 20 **FAILURE TO ANSWER**

21 36. To avoid entry of a Default Order against you pursuant to 40 C.F.R. § 22.17 for a  
22 penalty of up to \$27,500 as proposed in this Complaint, Respondent must file a written Answer  
23 with the Regional Hearing Clerk at the address above within thirty days of receipt of this  
24 Complaint.

1 37. Any penalty assessed in the Default Order will become due and payable by  
2 Respondent without further proceedings thirty days after the Default Order becomes final  
3 pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to  
4 enforce such Default Order against Respondent, and to collect the assessed penalty amount, in  
5 federal court.

6 38. Whether or not Respondent requests a formal hearing, Respondent may request an  
7 informal settlement conference to discuss the facts of this case, the proposed penalty, and the  
8 possibility of settling this matter. 40 C.F.R. § 22.18(b). To request such a settlement conference,  
9 please contact:

10 Rich Campbell  
11 Office of Regional Counsel  
12 U.S. Environmental Protection Agency, Region IX  
13 75 Hawthorne Street (ORC-2)  
San Francisco, CA 94105  
Phone: (415) 972-3870.

14 Mr. Campbell is authorized to receive service related to this proceeding.

15 39. The parties may engage in settlement discussions regardless of whether Respondent  
16 requests a hearing. 40 C.F.R. § 22.18(b)(1). In other words, even if Respondent requests a formal  
17 hearing, Respondent may also request an informal settlement conference and the informal  
18 conference procedure may be pursued simultaneously with the formal adjudicatory hearing  
19 procedure. A request for an informal settlement conference constitutes neither an admission nor a  
20 denial of any of the matters alleged in the Complaint. EPA does not deem a request for an  
21 informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

22 40. Settlement discussions do not affect Respondent's obligation to file a timely Answer  
23 to the Complaint pursuant to 40 C.F.R. § 22.15. 40 C.F.R. § 22.18(b)(1). EPA will not modify its  
24 proposed penalty simply because an informal settlement conference is held.

1 41. The terms and conditions of any settlement that may be reached as a result of a  
2 settlement conference will be recorded in a written Consent Agreement signed by all parties. 40  
3 C.F.R. § 22.18(b)(2). To conclude the proceeding, EPA will execute a Final Order ratifying the  
4 parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement,  
5 Respondent waives any right to contest the allegations in the Complaint and waives any right to  
6 appeal the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

7 42. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise  
8 affect Respondent's obligation to comply with all applicable statutory and regulatory  
9 requirements and legal orders.

10 **FILING OF DOCUMENTS**

11 43. Respondent must send the Answer and any Hearing Request, as well as all subsequent  
12 documents filed in this action, to:

13 Danielle Carr  
14 Regional Hearing Clerk  
15 U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street (ORC-1)  
San Francisco, CA 94105

16 Respondent must send a *copy* of the Answer, a *copy* of any Hearing Request, and a *copy* of all  
17 subsequent documents filed in this action, to:

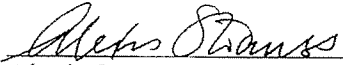
18 Rich Campbell  
19 Office of Regional Counsel  
20 U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street (ORC-2)  
21 San Francisco, CA 94105

22 44. Respondent has a right to be represented by an attorney at any stage of this proceeding.

23 45. This Complaint does not constitute a waiver, suspension, or modification of the  
24 requirements of the SDWA, any regulations promulgated thereunder, or any applicable permit.  
25

1           46. Neither assessment nor payment of an administrative civil penalty pursuant to section  
2 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), will affect Respondent's continuing  
3 obligation to comply with the SDWA, and with regulations promulgated thereunder.  
4

5  
6 Dated this 11<sup>th</sup> day of September, 2008

  
\_\_\_\_\_  
Alexis Strauss, Director  
Water Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-carried to the Regional Hearing Clerk, EPA, Region 9, 75 Hawthorne Street, San Francisco, California, and that a true copy of the same was delivered as follows:

Via certified mail, return receipt requested, to:

Pat Paulsell  
Arizona Windsong Water Company  
P.O. Box 261  
Sanders, AZ 86512

9/15/2008

DATE

Alicia Reyes

NAME

Office Automation Clerk

TITLE



CERTIFICATE OF SERVICE

I hereby certify that the foregoing FINAL ORDER GRANTING APPROVAL OF CONSENT AGREEMENT (with the Consent Agreement and attached Exhibits) in the matter of Arizona Windsong Water Company, SDWA-09-2008-00011, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk (file date October 15, 2014), and has been served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:  
(Certified w/Return Receipt)

For Respondent -

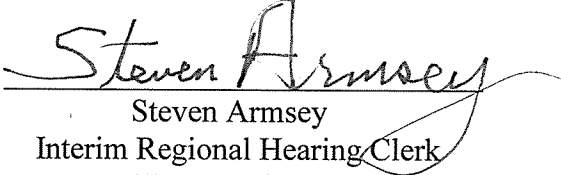
Timothy J. Sabo  
Roshka, DeWulf & Patten, LLC  
One Arizona Center  
400 East Van Buren (Suite 800)  
Phoenix, AZ 85004

HAND DELIVERED:

For Complainant -

Richard Campbell, Esq.  
Office of Regional Counsel  
ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, Calif., this 15th day of October, 2014.

  
Steven Armsey  
Interim Regional Hearing Clerk  
EPA, Region 9