

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA [PHOENIX DIVISION]**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:05-03579-PHX-MHM
	)	
GEORGE H. JOHNSON, JOHNSON	)	
INTERNATIONAL, INC., GENERAL	)	
HUNT PROPERTIES, INC., and	)	
3-F CONTRACTING, INC.,	)	
	)	
Defendants.	)	
	)	

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the First Amended Complaint (“Complaint”) herein on December 28, 2006 against Defendants George H. Johnson, Johnson International, Inc., General Hunt Properties, Inc., and 3-F Contracting, Inc. (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging and/or causing to be discharged dredged or fill material into waters of the United States, namely, the Santa Cruz River and its tributaries, including the Los Robles

Wash, at various sites on what is commonly known as the adjacent King Ranch and La Osa Ranch located in Pinal County, Arizona, and more fully described in the Complaint (the “Sites”), without authorization by the United States Department of the Army, acting through the Chief of the United States Army Corps of Engineers (“the Corps”), pursuant to Section 404 of the CWA, 33 U.S.C. § 1344;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ claims under the CWA set forth in the Complaint regarding the Sites;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States’ CWA claims against Defendants in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States’ claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. Venue is proper in the District of Arizona pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

## II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, employees and servants, and their parent companies, affiliates, subsidiaries, successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of the Defendant's officers, directors, agents, employees, parent companies, affiliates, subsidiaries, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof.

### III. SCOPE OF CONSENT DECREE

5. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint under CWA Sections 301 and 404 concerning the Sites, including claims based on alleged continuing violations, against the Defendants and the George H. Johnson Revocable Trust (the “Trust”) and all entities and individuals who acted on behalf of or at the direction of any of the Defendants or the Trust (collectively, the “Releasees”) for the discharges of dredged and fill material alleged in the Complaint.

6. This Consent Decree furthers the objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251.

7. The obligations of Defendants George H. Johnson, Johnson International, Inc., and General Hunt Properties, Inc. (collectively, “Johnson Defendants”) under this Consent Decree are joint and several.

8. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps or EPA (or the State of Arizona, as the EPA-approved state to administer the CWA Section 402 permit program) to issue, modify, suspend, revoke or deny any permit or to otherwise exercise its authority under the CWA.

9. Except as provided in Paragraph 5, this Consent Decree in no way affects or relieves Defendants or Releasees of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

10. Except as provided in Paragraph 5, this Consent Decree in no way affects the rights of the United States as against any person other than Releasees.

11. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

12. Nothing in this Consent Decree shall constitute an admission of fact or law by any party or a waiver by Defendants of any defense that was pled or could have been pled.

#### IV. SPECIFIC PROVISIONS

13. Defendants are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

14. The Johnson Defendants shall pay a civil penalty to the United States in the amount of One Million Dollars (\$1,000,000) within thirty (30) days of entry of this Consent Decree.

15. Defendant 3-F Contracting, Inc. shall pay a civil penalty to the United States in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) within thirty (30) days of entry of this Consent Decree.

16. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2005V00790, EPA Region IX and the U.S. Department of Justice case number 90-5-1-1-17469. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Arizona. In the alternative, Defendants shall make the above-referenced payments by check made payable to the U.S. Department of Justice and referencing U.S.A.O. file number 2005V00790, EPA Region IX and the U.S. Department of Justice case number 90-5-1-1-17469. The check shall be mailed via overnight courier or certified mail to the following address:

U.S. Attorney’s Office  
Financial Litigation Unit  
405 W. Congress Street, Suite 4900  
Tucson, AZ 85701-5041

Any payments received by the U.S. Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

17. Upon payment of the civil penalties required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section VI of this Consent Decree, that such payment was made in accordance with Paragraph 16.

18. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section V) are penalties within the meaning of Section

162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

V. INTEREST & STIPULATED PENALTIES

19. If Johnson Defendants or Defendant 3-F Contracting, Inc. fail to make the payments under Paragraphs 14 and 15, respectively, by the required due date, interest shall accrue on their respective unpaid balances through the date of payment in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

20. If Johnson Defendants or Defendant 3-F Contracting, Inc. fail to make the payments under Paragraphs 14 and 15, respectively, by the required due date, the party failing to make the payment shall also pay a stipulated penalty to the United States as follows:

- A. For Day 1 up to and including Day 30 of non-compliance \$1,000.00 per day
- B. For Day 31 up to and including Day 60 of non-compliance \$2,000.00 per day
- C. For Day 61 and beyond of non-compliance \$3,000.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

21. Defendants shall make any payment of a stipulated penalty and provide written notice of such payment in accordance with the requirements set forth in Paragraphs 16 and 17 above.

**VI. ADDRESSES**

22. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

**A. TO EPA:**

Jessica Kao, Assistant Regional Counsel  
Water Practice Group  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

**B. TO THE UNITED STATES DEPARTMENT OF JUSTICE:**

Robert H. Foster, Attorney  
Rochelle L. Russell, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

**C. TO JOHNSON DEFENDANTS:**

John DiCaro  
Jones, Skelton & Hochuli, P.L.C.  
2901 North Central Avenue, Suite 800  
Phoenix, AZ 85012

**D. TO DEFENDANT 3-F CONTRACTING:**

Dwayne Ross	Ronald Christopher Archibeque
Doyle Berman Murdy PC	O'Connor & Campbell PC
1313 E. Osborn Rd.	3838 N. Central Ave, Suite 1800
Phoenix, AZ 85014	Phoenix, AZ 85012



## VII. COSTS OF SUIT

23. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should any Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, such Defendant shall be liable for any costs or attorneys' fees incurred by the United States in any action against such Defendant for noncompliance with or enforcement of this Consent Decree.

## VIII. PUBLIC COMMENT

24. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

## IX. CONTINUING JURISDICTION OF THE COURT

25. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree.

X. MODIFICATION

26. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

XI. TERMINATION

27. This Consent Decree shall be terminated as to any Defendant that has complied with the payment requirements set forth in Paragraphs 14 or 15 upon joint motion of Plaintiff and the Defendant that has made the requisite payment.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
United States District Judge

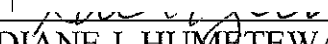
**FOR PLAINTIFF UNITED STATES OF AMERICA:**

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division

*[Handwritten signature]*  
\_\_\_\_\_  
Robert H. Foster, Attorney  
Rochelle L. Russell, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Dated: *9/29/08*

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

  
\_\_\_\_\_  
DIANE J. HUMETEWA  
United States Attorney  
District of Arizona  
SUE A. KLEIN  
Assistant United States Attorney  
Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, AZ 85004-4408

Dated: 9/18/08

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

Dated: October 2, 2008

GRANTA Y. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
Washington, D.C. 20460

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

Dated: 9/26/08

\_\_\_\_\_  
WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

**OF COUNSEL:**

Jessica Kao  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

FOR DEFENDANTS ~~GEORGE H. JOHNSON, JOHNSON INTERNATIONAL, INC., AND GENERAL HUNT PROPERTIES, INC.:~~

Dated: ~~Sept 16, 2008~~

George Johnson, individually and as the authorized representative of Johnson International, Inc. and General Hunt Properties, Inc.

**FOR DEFENDANT 3-F CONTRACTING, INC.:**

Dated: 9-16-08

JIM FLUERET, PRESIDENT  
3-F CONTRACTING, INC.  
657 SOUTH KINGS RANCH ROAD  
PMB 102  
GOLD CANYON, AZ 85218