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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.*, STEPHEN A.)
OWENS, Director, Arizona Department of)
Environmental Quality; MARK WINKLEMAN,)
Commissioner, Arizona State Land Department;)
ARIZONA GAME AND FISH COMMISSION;)
DONALD BUTLER, Director, Arizona)
Department of Agriculture; ARIZONA BOARD)
OF REGENTS, on behalf of the Arizona State)
Museum,)

Plaintiff,

-VS-

GEORGE H. JOHNSON and JANA S.)
JOHNSON, husband and wife; THE GEORGE)
H. JOHNSON REVOCABLE TRUST, and)
GEORGE H. JOHNSON and JANA JOHNSON,)
co-trustees; JOHNSON INTERNATIONAL,)
INC.; THE RANCH AT SOUTH FORK, L.L.C.;)
GENERAL HUNT PROPERTIES, INC.;)
ATLAS SOUTHWEST, INC.; KARL ANDREW)
WOEHLECKE and LISA WOEHLECKE,)
husband and wife; JOHN DOE and JANE DOE,)
husbands and wives, 1 through 10; ABC)
CORPORATIONS, 1 through 10.)

Defendants.

CV 2005-002692
Case No: CV2005-_____

COMPLAINT

(Non-Classified Civil —
Complex)

1 The State of Arizona (the "State"), by and through the Director of the Arizona
2 Department of Environmental Quality, the Director of the Arizona Department of
3 Agriculture, the Commissioner of the Arizona State Land Department, the Arizona Board
4 of Regents, and the Arizona Game and Fish Commission, for its Complaint herein,
5 alleges as follows:

6 NATURE OF ACTION

7 1. This action seeks civil penalties and/or damages and equitable relief arising
8 out of Defendants' destruction of and injury to the State's valuable natural and
9 archaeological resources, including by: (i) bulldozing and clearing approximately 270
10 acres of State Trust Lands in and near the Ironwood Forest National Monument and the
11 Los Robles Archaeological District; (ii) bulldozing and clearing an estimated 2,000 acres
12 of other lands without complying with applicable State laws; (iii) causing irreparable
13 damage to protected archaeological sites on State Trust Lands; (iv) destroying countless
14 protected native plants; (v) discharging pollutants into waters of the State and altering
15 and damaging watercourses of the State; (vi) causing the injury and death of numerous
16 Arizona desert bighorn sheep; (vii) breaching the terms of a State grazing lease that
17 protected natural and archaeological resources on State Trust Lands; and (viii) otherwise
18 engaging in trespasses to State Trust Lands and violations of statutes and regulations
19 designed to protect the State's water quality, native plants, and archaeological resources.

20 JURISDICTION AND VENUE

21 2. This action is brought, and the jurisdiction of this Court is invoked, under
22 Article 6, § 14 of the Constitution of Arizona and A.R.S. §§ 12-123 and 12-1801.

23 ...

24 ...

1 3. This Court has personal jurisdiction over Defendants George H. Johnson
2 and Jana S. Johnson because they reside in Maricopa County, Arizona. This Court has
3 personal jurisdiction over Defendants Johnson International, Inc., General Hunt
4 Properties, Inc. and Atlas Southwest, Inc. because they are Arizona corporations. This
5 Court has personal jurisdiction over Defendant The Ranch at South Fork L.L.C. because
6 it is an Arizona limited liability company. This Court has personal jurisdiction over
7 Defendant The George H. Johnson Revocable Trust because its co-trustees and sole
8 beneficiaries reside in Maricopa County, Arizona. This Court has personal jurisdiction
9 over Defendants Karl and Lisa Woehlecke because they reside in Pinal County, Arizona.
10 This Court has personal jurisdiction over all Defendants because the acts complained of
11 occurred in the State of Arizona.

12 4. Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-401,
13 12-401(17) and 49-265.

14 THE PARTIES

15 5. Plaintiff's relator, Stephen A. Owens, is the Director of the Arizona
16 Department of Environmental Quality ("ADEQ"). Plaintiff's relator, Mark Winkleman,
17 is the Commissioner of the Arizona State Land Department ("State Land Department").
18 Plaintiff's relator, Donald Butler, is the Director of the Arizona Department of
19 Agriculture ("Department of Agriculture"). Plaintiff's relator, the Arizona Board of
20 Regents, governs the Arizona State Museum ("State Museum"). Plaintiff's relator, the
21 Arizona Game and Fish Commission ("Game and Fish Commission"), controls the
22 Arizona Game and Fish Department ("Game and Fish Department"). All of the
23 Plaintiff's relators are entitled to bring this action on behalf of the State. See A.R.S. §§
24 3-933(B), 49-262, 37-102, 37-132(A)(1), 17-231, 17-314, 16-1625.

1 6. Defendants George H. Johnson and Jana S. Johnson (“George and Jana
2 Johnson”) are a husband and wife, residing in Maricopa County, Arizona. George and
3 Jana Johnson were at all times alleged acting within the course and on behalf of their
4 marital community. Upon information and belief, Defendant George H. Johnson
5 directed, approved or acquiesced in many of the acts and omissions complained of herein.

6 7. Defendant The George H. Johnson Revocable Trust (“the Johnson Trust”)
7 is a revocable trust whose mailing address is 5230 E. Shea Blvd, #200, Scottsdale,
8 Arizona. George and Jana Johnson are the co-trustees and the sole beneficiaries of the
9 Johnson Trust and are personally liable as trustees for all the acts and omissions of the
10 Johnson Trust complained of herein. At the times relevant hereto, the Johnson Trust was
11 the owner of the King Ranch, described in paragraph 17 (“the King Ranch”), and the
12 lessee under (i) Grazing Lease No. 05-1613, issued by the State Land Department (“the
13 State Grazing Lease”), attached hereto as Exhibit A, and (ii) a grazing lease with the
14 United States Bureau of Land Management (“BLM”) for the “King” allotment, attached
15 hereto as Exhibit B.

16 8. Defendant General Hunt Properties, Inc. (“General Hunt”) is an Arizona
17 corporation located at 5230 E. Shea Blvd, # 200, Scottsdale, Arizona. The principal
18 business of General Hunt is characterized as real estate. The officers of General Hunt are
19 George H. Johnson (President) and Jana S. Johnson (Secretary/Treasurer). The directors
20 of General Hunt are George and Jana Johnson and Chris Johnson. At the times relevant
21 hereto, General Hunt was the owner of the La Osa Ranch, described in paragraph 16
22 below (“the La Osa Ranch”), and the lessee under a grazing lease with the BLM for the
23 “Old Sasco” allotment, attached hereto as Exhibit C.

24

1 9. Defendant Ranch at South Fork L.L.C. ("the Ranch at Southfork") is an
2 Arizona limited liability company located at 5230 E. Shea Blvd, # 200, Scottsdale,
3 Arizona. The Ranch at Southfork is the owner of the South Fork Property, described in
4 paragraph 50 below. At the times relevant hereto, George H. Johnson managed the South
5 Fork Property.

6 10. Defendant Johnson International, Inc. ("Johnson International") is an
7 Arizona corporation located at 5230 E. Shea Blvd, # 200, Scottsdale, Arizona. The
8 principal business of Johnson International is characterized as real estate. The officers
9 and directors of Johnson International are George H. Johnson (President/Treasurer) and
10 Jana S. Johnson (Vice President/Secretary). The principal shareholder of Johnson
11 International is the Johnson Trust.

12 11. Defendant Atlas Southwest, Inc. ("Atlas Southwest") is an Arizona
13 corporation located at 5230 E. Shea Blvd, # 200, Scottsdale, Arizona. The principal
14 business of Atlas Southwest is characterized as real estate. The officers and directors of
15 Atlas Southwest are George H. Johnson (President/Treasurer) and Jana S. Johnson (Vice
16 President/Secretary).

17 12. Defendants Karl Andrew Woehlecke ("Woehlecke") and Lisa Woehlecke
18 are a husband and wife, residing in Pinal County, Arizona. On information and belief,
19 Woehlecke and Lisa Woehlecke were at all times alleged acting within the course and on
20 behalf of their marital community. On further information and belief, during the period
21 alleged herein, Woehlecke was retained by one or more of the above-named Defendants
22 as the ranch manager for the La Osa Ranch and the King Ranch, and directed, approved
23 or acquiesced in many of the acts and omissions complained of herein.

24

1 13. At the times relevant hereto, Johnson, the Johnson Trust and its co-trustees,
2 General Hunt, Johnson International, Atlas and The Ranch at South Fork were owners
3 and/or involved in the operation of the La Osa Ranch, the King Ranch and/or the South
4 Fork Property.

5 14. References to "all Defendants" means all of the named Defendants.
6 References to "Defendants" means one or more of the named Defendants, their agents or
7 employees, and/or persons acting at the direction of the named Defendants. The identity
8 of the fictitiously-named Defendants is unknown at this time. Once the identity of the
9 fictitiously-named Defendants is determined, the State will seek leave to amend the
10 complaint.

11 GENERAL ALLEGATIONS

12 The La Osa Property

13 15. George H. Johnson ("Johnson") is an experienced Arizona real estate
14 developer. Johnson and/or his wife, Jana S. Johnson, directly or indirectly own or control
15 the Johnson Trust, General Hunt, Johnson International, and Atlas Southwest, all of
16 which are involved in the business of real estate.

17 16. In or around February 2003, General Hunt acquired title to "La Osa
18 Ranch," a large ranch located north of Sasco Road and west of Interstate Highway 10 in
19 Pinal County, Arizona.

20 17. In or around May 2003, the Johnson Trust acquired title to an adjoining
21 ranch known as "the King Ranch," which is located south of Sasco Road, adjacent to and
22 southeast of La Osa Ranch. The King Ranch and La Osa Ranch are collectively referred
23 to herein as "the La Osa Property" or "the Property".

1 The State Trust Lands

2 18. The La Osa Property is bordered in various locations by lands held by the
3 State of Arizona in trust for the benefit of the common schools and other public
4 institutions (“State Trust Lands”).

5 19. At the time the Johnson Trust and General Hunt acquired the La Osa
6 Property, approximately 13,086.5 acres of the State Trust Lands were subject to the State
7 Grazing Lease attached hereto as Exhibit A.

8 20. As of July 10, 2003, the Johnson Trust had assumed the obligations of the
9 State Grazing Lease.

10 21. Among other things, the State Grazing Lease prohibited the Lessee from
11 using the State Trust Lands subject to the lease for other than livestock grazing and
12 related purposes, and set forth numerous restrictions to protect the State Trust Land from
13 waste and loss.

14 General Description of the La Osa Property
15 and the State Trust Lands

16 22. The La Osa Property and the State Trust Lands are crossed by the Santa
17 Cruz River, the Los Robles Wash and many of their tributaries (collectively, the “Water
18 Bodies”).

19 23. At the time Johnson Trust and General Hunt acquired the La Osa Property,
20 the Property and the State Trust Lands were covered with vast quantities of native trees,
21 cacti and other native plants, including species protected by Arizona law.

22 24. The State Trust Lands along the western border of the La Osa Property are
23 within the boundaries of the Ironwood Forest National Monument, established by the
24

1 President of the United States in 2000. As President Clinton observed when he
2 established the Monument:

3 The landscape of the Ironwood Forest National Monument is swathed with
4 the rich, drought-adapted vegetation of the Sonoran Desert. The monument
5 contains objects of scientific interest throughout its desert environment.
6 Stands of ironwood, palo verde and saguaro blanket the monument floor
7 beneath the rugged mountain ranges, including the Silver Bell
8 Mountains... The monument is home to species federally listed as
9 threatened or endangered, including the Nichols turk's head cactus and the
10 lesser long-nosed bat, and contains historic and potential habitat for the
11 cactus ferruginous pygmy-owl. The desert bighorn sheep in the monument
12 may be the last viable population indigenous to the Tucson basin.
13 [Proclamation No. 7320, 65 Fed. Reg. 37259 (June 9, 2000)]

14 25. There are important archaeological sites on the La Osa Property and the
15 State Trust Lands to the west, including sites from the prehistoric Hohokam period, *circa*
16 A.D. 600-1450. Portions of the said lands are so rich archaeologically that they have
17 been designated on the National Register of Historic Places as within the "Los Robles
18 Archaeological District".

19 26. The King Ranch and the bordering State Trust Lands also include potential
20 critical habitat for the cactus ferruginous pygmy-owl (the "Pygmy Owl"), an endangered
21 species. In January 2003, the U.S. Fish and Wildlife Service ("U.S. Fish and Wildlife")
22 published a Draft Recovery Plan ("Proposal to Designate Critical Habitat"),
23 recommending that portions of the ranch be placed within "Silverbell Special
24 Management Area of "Recovery Area 2", where areas of existing Pygmy Owl habitat
25 would "remain undeveloped and areas restored to promote movement of [Pygmy Owls]
26 within a project, and in relation to adjacent projects, so as to create broad, contiguous
27 areas of vegetation oriented to facilitate [Pygmy Owls] movement across Interstate 10."

28 27. Defendants were aware of the above proposal at the time General Hunt
29 acquired title to the La Osa Ranch, and on June 25, 2003, Johnson International requested

1 U.S. Fish & Wildlife to exclude, *inter alia*, Recovery Area 2 from the agency's Proposal
2 to Designate Critical Habitat.

3 The La Osa PAD

4 28. On information and belief, at the time Defendants acquired control of the
5 La Osa Property, they intended to transform the property into a large residential and
6 business development, called "La Osa Ranch Planned Area Development" ("La Osa
7 PAD"). Defendants envisioned La Osa PAD as a stand-alone community, consisting of,
8 among other things, over 67,000 homes, a resort, multiple golf courses and businesses.

9 29. In furtherance of their development plans, on or about May 6, 2003,
10 Johnson International requested Pinal County to change the Property's designation in
11 Pinal County's Comprehensive Plan from "Development Sensitive" and "Rural" to
12 "Transitional." Thereafter, on or about October 15, 2003, Johnson International submitted
13 a detailed description of the proposed La Osa PAD to the Pinal County for its approval.

14 30. Johnson International's requests to Pinal County generated considerable
15 public concern and/or opposition, including concerns about the impact that the proposed
16 development may have on the adjacent Ironwood Forest National Monument, the
17 archaeological sites within the Los Robles Archaeological District, the Santa Cruz River,
18 the area's riparian habitat, the bighorn sheep in the Silver Bell Mountains, areas of
19 religious and cultural significance to Native Americans, and endangered species such as
20 the Pygmy Owl.

21 31. Nevertheless, as further discussed below, even as Johnson International's
22 requests were being considered, Defendants already had bulldozers and other earth
23 moving equipment clearing and leveling substantial portions of "Neighborhood 1" of the
24 proposed development, trespassing on State Trust Lands, destroying protected native

1 plants, filling in water courses, discharging pollutants, irreparably damaging ancient and
2 historic archaeological sites, and otherwise ignoring numerous laws applicable to
3 developers in their position.

4 Defendants' Illegal Activities on the La Osa Property
5 And the State Trust Lands

6 32. During March–November, 2003, and without seeking or obtaining
7 necessary permits or permission from the State, Defendants illegally and intentionally
8 caused the massive clearing, grading and excavating (hereinafter “bulldozing and
9 clearing”) of an estimated 2,000 acres of the La Osa Property and approximately 270
10 acres of State Trust Land. The lands subjected to Defendants bulldozing and clearing are
11 collectively referred to herein as “the Subject Lands”.

12 33. The lands on the La Osa Property bulldozed and cleared by Defendants
13 were within the boundaries of “Neighborhood 1” of the La Osa PAD, and included
14 substantial portions thereof. See Exhibit D.

15 34. The State Trust Lands bulldozed and cleared by Defendants (the
16 “Trespassed Lands”) include those lands generally depicted as Areas 1-4 on Exhibit E.
17 Exhibit F contains photographs of Areas 1-4, taken before and shortly after Defendants’
18 bulldozing and clearing. The Trespassed lands also include certain lands outside Areas 1-
19 4, where Defendants used bulldozers to widen unpaved roads and/or create new roads.

20 35. Defendants’ bulldozing and clearing destroyed nearly all living trees, cacti
21 and other plants on the Subject Lands, including species protected by Arizona’s native
22 plant laws, such as Saguaro cacti, Barrel cacti, Pincushion cacti, Cholla cacti, Palo Verde
23 trees, Mesquite trees, and Ironwood trees. Some of the plants destroyed by Defendants
24

1 (e.g., mesquite, palo verde, and saguaro) were the very species identified by the U.S. Fish
2 & Wildlife Service as habitat for the endangered Pygmy Owl.

3 36. During their bulldozing and clearing of the Subject Lands, Defendants
4 caused dirt, sediment, rocks, vegetation and other debris to be discharged into many of
5 the Water Bodies. Defendants filled many of the washes on the Subject Lands with dirt,
6 sediment, rocks, vegetation and debris, thereby obstructing the flow of many of the Water
7 Bodies and altering the drainage pattern of the area.

8 37. Defendants' bulldozing and clearing (including the creation and/or
9 widening of roads) caused significant damage to or destroyed portions of at least seven
10 Hohokam archaeological sites on the State Trust Lands, all within the Los Robles
11 Archaeological District. Among the sites damaged were portions of a 153-acre village
12 on the west bank of Los Robles Wash (circa A.D. 750 to A.D. 1250) and an 18-acre
13 village on the west edge of the Los Robles Wash floodplain (circa A.D. 950 to A.D.
14 1150). Two of the damaged prehistoric Hohokam sites also included historic
15 components.

16 38. At no time before or during Defendants' bulldozing and clearing did
17 Defendants obtain: (i) the consent of the State Land Department to conduct such
18 activities on State Trust Lands; (ii) archaeology permits from or provide notice to the
19 State Museum, as required by Arizona's Antiquities Act, A.R.S. § 41-841 *et seq.*; (iii)
20 native plant permits, tags, seals, or receipts from, or provide notice to, the Department of
21 Agriculture, as required by Arizona's native plant laws, A.R.S. § 3-901 *et seq.*; or (iv)
22 coverage under any permit required under the federal Clean Water Act, 33 U.S.C. § 1344,
23 or under State water quality laws, including A.R.S. § 49-255.01, and the rules and
24 permits promulgated thereunder.

The Silver Bell Bighorn Sheep Herd

1
2 39. Upon information and belief, during August-December 2003, Defendants
3 caused between four and five thousand domestic goats (“the domestic goats” or
4 “Defendants’ goats”) to be located on the La Osa Property and/or adjacent lands leased
5 by Defendants from the state and/or federal governments (collectively, the “La Osa
6 range”).

7 40. At all times relevant hereto, Defendants knew or should have known that
8 there was a herd of desert bighorn sheep (the “Silver Bell Herd”) that ranged in or around
9 the Silver Bell Mountains, southwest of the La Osa range.

10 41. Defendants further knew or should have known that domestic goats can
11 directly transfer certain diseases to desert bighorn sheep.

12 42. To protect desert bighorn sheep from diseases communicated by domestic
13 sheep and goats, the grazing leases issued by the BLM to the Johnson Trust and General
14 Hunt specifically provided: “To protect desert bighorn sheep: No domestic sheep or goat
15 grazing will be authorized on public lands within 9 miles surrounding desert bighorn
16 sheep habitat.” Exhibits B and C. This provided Defendants with notice that domestic
17 goats can cause harm to bighorn sheep.

18 43. The La Osa range is within nine miles of the Silver Bell Herd.

19 44. Upon information and belief, many of Defendants’ goats carried
20 communicable diseases, including infectious keratoconjunctivitis and contagious
21 ecthyma.

22 45. In or around November 2003, Defendants failed to control or restrain the
23 domestic goats, with the result that many of the goats left the La Osa Range and made
24 their way to lands in and around the Silver Bell Mountains used by the Silver Bell Herd.

1 In so doing, on information and belief, Defendants' goats trespassed onto State Trust
2 Lands not leased by Defendants, federal lands not leased by Defendants, and lands
3 covered by the BLM grazing leases attached as Exhibits B and C.

4 46. During and/or as a result of the above trespasses, the domestic goats
5 commingled with the Silver Bell Herd and communicated infectious keratoconjunctivitis
6 and/or contagious ecthyma to numerous desert bighorn sheep (the "epizootic episode"),
7 thereby threatening the existence of the Silver Bell Herd.

8 47. The desert bighorn sheep in the Silver Bell Herd are the property of the
9 State. The State, through the Game and Fish Commission and the Game and Fish
10 Department, acts as the trustee to manage and conserve the Silver Bell Herd and its sheep
11 for the benefit of the public.

12 48. In response to this epizootic episode, the Game and Fish Department
13 intervened to provide medical care to the Silver Bell Herd and to monitor its condition,
14 including by using helicopters to transport veterinarians and wildlife specialists to
15 identify, capture and medicate the infected sheep.

16 49. Notwithstanding the State's efforts, as a result of the epizootic episode, at
17 least forty-nine (49) of the desert bighorn sheep suffered serious symptoms, including
18 blindness, scabbing and bleeding of the mouth. At least twenty-one (21) of the sheep
19 died, from malnutrition, falling from the steep terrain, or the inability to evade predators.

20 Defendants' Illegal Activities on the South Fork Property

21 50. "The South Fork Property" consists of approximately thirty eight (38) acres
22 in the White Mountains of Arizona, located in Section 17 of Township 8 North, Range 28
23 East, Arizona, Apache County.

1 51. The South Fork Property is located along the banks of the Little Colorado
2 River (the "Little Colorado") and the South Fork of the Little Colorado River (the "South
3 Fork").

4 52. On or before July 31, 2001, and at various times thereafter, one or more of
5 Defendants began conducting construction activities on the South Fork Property,
6 including clearing, grading and excavating activities.

7 53. During August 7-9, 2001, Defendants, or persons acting at the direction of
8 Defendants, discharged the contents of several constructed surface impoundments into
9 the Little Colorado from the South Fork Property. The surface impoundments contained
10 well drilling fluids, cuttings, fines and sediment from well drilling and construction
11 activities. At no time did Defendants obtain coverage under any permit required under
12 State water quality laws, including A.R.S. § 49-241, with respect to these discharges.

13 54. On or before September 12, 2001, Defendants, or persons acting at the
14 direction of Defendants, discharged sediment and vegetative material into the South Fork
15 from various locations on or near the South Fork Property, including through use of a
16 back hoe. Defendants further engaged in considerable earth moving activities along the
17 banks and in the channel of the South Fork to construct a retention pond in the channel.

18 55. The foregoing actions and discharges violated several State water quality
19 laws, described in Count X below.

20 **FIRST CAUSE OF ACTION**
21 **(Common Law Trespass)**

22 For its First Cause of Action, Plaintiff, on behalf of the State Land Department and
23 the State Museum, alleges as follows:
24

1 56. Plaintiff repeats and realleges paragraphs 1 through 55 as though set forth
2 in full.

3 57. As alleged in paragraph 32, the lands bulldozed and cleared by Defendants
4 included approximately 270 acres of State Trust Lands. The Trespassed Lands were
5 located within portions of Township 10 South, Range 9 East, Sections 22, 25, 26 and 36
6 in Pinal County, bordering the La Osa Property. Approximately 230 acres of the
7 Trespassed Lands are within the Ironwood Forest National Monument and the Los
8 Robles Archaeological District.

9 58. All of the Trespassed Lands were encompassed within the State Grazing
10 Lease, attached as Exhibit A.

11 59. Among other things, the State Grazing Lease: (i) Prohibited the Lessee
12 from using the leased land for any use or activity other than ranging livestock and related
13 uses [Exhibit A, ¶ 4.1]; (ii) Prohibited the Lessee from causing “waste or loss” to the
14 leased lands, including by destroying “standing trees,” without prior written consent of
15 the State Land Department, except for “wood for fuel for domestic uses and authorized
16 improvements” [*id.*, ¶ 12.1]; and (iii) Required the Lessee to comply with the
17 provisions of the Arizona Native Plant Law (A.R.S. § 3-901 et seq. or any successor
18 statutes) and Arizona laws relating to archaeological discoveries (A.R.S. § 41-841 et seq.
19 or any successor statutes), and prohibited Lessee from disturbing “any cacti or other
20 protected native plants” and from disturbing “any ruins, burial grounds or other
21 archaeological sites except as permitted by these laws” [*id.* ¶ 13.1].

22 60. Defendants’ bulldozing and clearing of the Trespassed Lands were outside
23 the scope of actions permitted under and in violation of the State Grazing Lease and
24

1 undertaken without the permission, authorization or consent of the State Land
2 Department.

3 61. Defendants' activities were a common law trespass and caused significant
4 damage to the land and the natural and cultural resources of the State.

5 62. Defendants' trespass included massive destruction of and interference with
6 the surface geography of the Trespassed Lands, obstruction of the flow of many of the
7 Water Bodies thereon, and alteration of their drainage pattern. Defendants' activities
8 have caused and will continue to cause flooding and erosion on the Trespassed Lands and
9 on other State Trust Lands in the vicinity thereof.

10 63. Defendants' trespass further included substantial injury to at least seven
11 separate archaeological sites on the Trespassed Lands, which are located within the
12 Ironwood Forest National Monument and Los Robles Archaeological District. Not only
13 were the sites seriously damaged by Defendants' bulldozing and clearing, the erosion and
14 flooding resulting from those activities has and will continue to cause damage to the
15 remains of the sites.

16 64. Defendants' trespass further included numerous violations of Arizona's
17 antiquities laws. Defendants violated A.R.S. § 41-841(A) by knowingly excavating
18 archaeological sites and other sites protected by A.R.S. § 41-841(A) ("protected sites")
19 on the Trespassed Lands without qualifying for or obtaining a permit from the State
20 Museum pursuant to A.R.S. § 41-842. Defendants also violated A.R.S. § 41-843 by
21 defacing and otherwise altering sites and objects embraced within the terms of A.R.S. §§
22 41-841 and 41-842 without obtaining a permit granted by the Director of the State
23 Museum. As a result of Defendants' conduct, the State, by and through the State
24 Museum, has lost valuable knowledge and artifacts that cannot be replaced.

1 65. Defendants' trespass further included (i) substantial damage to and/or the
2 destruction of virtually all trees, cacti and other plants on the Trespassed Lands, thereby
3 causing significant waste and loss to State Trust Land, and (ii) numerous violations of
4 Arizona's Native Plant Act, A.R.S. § 3-908(A).

5 66. The State has incurred and will continue to incur expenses in responding to
6 the damage to State Trust Lands caused by Defendants' trespass.

7 67. Upon information and belief, Defendants' acts in trespassing and
8 destroying the State's resources were willful and intentional.

9 **SECOND CAUSE OF ACTION**
10 **(Breach of the State Grazing Lease)**

11 For its Second Cause of Action, Plaintiff, on behalf of the State Land Department
12 and the State Museum, alleges as follows:

13 68. Plaintiff repeats and realleges paragraphs 1 through 67 as though set forth
14 in full.

15 69. Upon information and belief, the Johnson Trust directed and/or knowingly
16 permitted the trespasses alleged in paragraphs 32, 34-37 and 57-65.

17 70. The activities constituting said trespasses were a material breach of the
18 Johnson Trust's obligations under the State Grazing Lease.

19 71. The Johnson Trust further breached its obligations under the State Grazing
20 Lease by failing to abide by paragraph 14.2 thereof, which states that "in the event of
21 known trespass on the Subject Land resulting in damage thereto, Lessee shall make
22 reasonable efforts to Notify Lessor and appropriate law enforcement authorities."

23 ...

24 ...

1 72. The Johnson Trust failed to cure its defaults under the State Grazing Lease.

2 73. On May 28, 2004, the State Land Department issued an Order for
3 Cancellation of the State Grazing Lease for failure to cure defaults, a copy of which is
4 attached hereto as Exhibit G and incorporated herein (the "Order of Cancellation").

5 74. The Johnson Trust failed to appeal the Order of Cancellation.

6 75. As a direct and proximate consequence of the Johnson Trust's breach of
7 contract, the State Land Department has suffered and will continue to suffer substantial
8 damages.

9
10 **THIRD CAUSE OF ACTION**
(Statutory Trespass)

11 For its Third Cause of Action, Plaintiff, on behalf of the State Land Department
12 and the State Museum, alleges as follows:

13 76. Plaintiff repeats and realleges paragraphs 1 through 75 as though set forth
14 in full.

15 77. During Defendants' bulldozing and clearing of the Trespassed Lands,
16 Defendants knowingly trespassed upon state lands by cutting down and/or destroying
17 wood growing thereon and by unlawfully occupying and plowing the said state lands
18 without permission, authorization or consent of the State Land Department, in violation
19 of A.R.S. §§ 37-501 and 502(A).

20 78. On information and belief, Defendants' trespasses were willful, entitling
21 the State to three times the amount of damage caused by the trespass under A.R.S. 37-
22 502(A).

23 ...

24 ...

1 **FOURTH CAUSE OF ACTION**
2 **(Protected Native Plants on State Land)**

3 For its Fourth Cause of Action, Plaintiff, on behalf of the Department of
4 Agriculture, alleges as follows:

5 79. Plaintiff repeats and realleges paragraphs 1 through 78 as though set forth
6 in full.

7 80. In the course of Defendants' bulldozing and clearing of the Trespassed
8 Lands, Defendants destroyed, dug up, mutilated and/or cut multiple species of plants
9 protected by Arizona's Native Plant Act, (see A.R.S. § 3-901 *et seq.*; A.C.C. § R3-4-
10 601(13), Appendix A (recodified at R3-3-1101(8), Appendix A), including Mesquite,
11 Palo Verde and Ironwood trees and Pincushion, Cholla, Barrel and Saguaro cacti.
12 Defendants destroyed over 40,203 protected native plants on the Trespassed Lands.

13 81. Defendants violated A.R.S. § 3-908 by destroying, digging up, mutilating
14 and/or cutting living protected native plants from the Trespassed Lands without obtaining
15 the required permit, tags, seals or receipts from the Department of Agriculture.

16 82. Defendants committed at least 40,203 knowing violations of A.R.S. § 3-
17 908.

18 83. Defendants are subject to penalties pursuant to A.R.S. § 3-933 for not more
19 than \$5,000 for each knowing violation.

20 **FIFTH CAUSE OF ACTION**
21 **(Protected Native Plants on Private Property)**

22 For its Fifth Cause of Action, Plaintiff, on behalf of the Department of
23 Agriculture, alleges as follows:

1 84. Plaintiff repeats and realleges paragraphs 1 through 83 as though set forth
2 in full.

3 85. In the course of Defendants' bulldozing and clearing on the La Osa
4 Property, Defendants destroyed numerous protected native plants, as defined by A.R.S. §
5 3-903(A) and A.A.C. R3-4-601(13), Appendix A (recodified as R3-3-1111(8), Appendix
6 A).

7 86. Defendants violated A.R.S. § 3-904 and A.A.C. R3-4-602 (recodified as
8 R3-3-1102) by destroying protected native plants without providing the required written
9 notification to the Department of Agriculture sixty days before said destruction.
10 Defendants further violated A.A.C. R3-4-602 (recodified as R3-3-1102) by destroying
11 protected native plants without receiving a written confirmation notice from the
12 Department of Agriculture.

13 87. Defendants committed numerous knowing violations of A.R.S. § 3-904 and
14 A.A.C. R3-4-602 (recodified as A.A.C. R3-3-1102).

15 88. Pursuant to A.R.S. § 3-933, Defendants are subject to civil penalties of not
16 more than \$5,000 for each knowing violation of A.R.S. § 3-904 and A.A.C. R3-4-602
17 (recodified as A.A.C. R3-3-1102).

18 **SIXTH CAUSE OF ACTION**
19 **(Water Quality and Storm Water Discharge Violations –**
20 **La Osa Property and State Trust Lands)**

20 For its Sixth Cause of Action, Plaintiff, on behalf of ADEQ, alleges as follows:

21 89. Plaintiff repeats and realleges paragraphs 1 through 88 as though set forth
22 in full.

23 90. The Water Bodies are hydrologically connected to the Gila River, a water
24 of the State of Arizona.

1 91. The Water Bodies are navigable waters within the meaning of A.R.S. § 49-
2 201(21) and surface waters of the State, as defined by A.A.C. R18-11-101.43. ADEQ
3 inspected the La Osa site on December 3, 2003, and January 14, 2004, and observed
4 evidence of significant land clearing, grading, excavation and stockpiling activities. Dirt,
5 vegetative material and sediment were stockpiled at various locations along the banks of
6 the Santa Cruz River and its tributaries and were also discharged into many of the Water
7 Bodies. Sections of the Los Robles Wash and other tributaries to the Santa Cruz River
8 were completely obstructed with earth and material from the bulldozing and clearing
9 conducted by Defendants. At numerous locations along the Santa Cruz River and its
10 tributaries, ADEQ identified swales, rills and depressions and other pathways for
11 pollutants to enter the Santa Cruz River and its tributaries from the areas bulldozed and
12 cleared by Defendants.

13 92. By engaging in the foregoing actions and the other bulldozing and clearing
14 activity described herein, Defendants have violated A.R.S. § 49-255.01(A), which
15 prohibits any discharge to a navigable water except in conformance with a permit that is
16 issued or authorized under the Arizona Pollutant Discharge Elimination System. On
17 numerous occasions when precipitation occurred, during the period from March 1, 2003
18 through February 14, 2005, there were discharges of pollutants to navigable waters
19 without such required permit. Such discharges will continue to occur when there is
20 sufficient precipitation in the area of the Subject Lands.

21 93. Defendants have also violated A.A.C. R18-9-C901.B, which required
22 Defendants to file a Notice of Intent with ADEQ before commencing their bulldozing
23 and clearing and other construction activities as described above. The Notice of Intent
24 was required in order for Defendants to obtain coverage under the ADEQ Construction

1 General Permit adopted under the authority of A.R.S. § 49-255.01. Defendants were
2 required to obtain such coverage pursuant to A.R.S. § 49-255.01 and rules adopted
3 thereunder, including A.A.C. R18-9-A902.B.8.c and 40 Code of Federal Regulations
4 (CFR) 122.26(c)(1) and 122.26(b)(14)(x), adopted pursuant to A.A.C. R18-9-A905.

5 94. A.R.S. § 49-262.A provides that the Director, of ADEQ, through the
6 Attorney General, may request a temporary restraining order, a preliminary injunction, a
7 permanent injunction or any other relief necessary to protect the public health if the
8 Director has reason to believe that a person is in violation of any provision of Article 2, 3
9 or 3.1 of Chapter 2 of A.R.S. Title 49 or of a rule adopted thereunder. Accordingly,
10 Plaintiff is entitled to an injunction against Defendants requiring them, *inter alia*, to
11 comply with A.R.S. § 49-255.01, and the rules promulgated and the permits required
12 thereunder, and specifically requiring measures to prevent the discharge of pollutants and
13 construction-related storm water to navigable waters, including the Water Bodies.

14 95. A.R.S. § 49-262.C provides that any person, who violates any provision of
15 Article 2, 3 or 3.1 of Chapter 2 of Title 49 or of a rule adopted pursuant thereto, is subject
16 to a civil penalty of not to exceed \$25,000 per day per violation. Accordingly, pursuant
17 to A.R.S. § 49-262.C, Defendants are subject to civil penalties of \$25,000 per day for
18 each of the violations cited in paragraphs 92-93 above.

19 **SEVENTH CAUSE OF ACTION**
20 **(Unlawful Killing of Bighorn Sheep)**

21 For its Seventh Cause of Action, Plaintiff, on behalf of the Game and Fish
22 Commission, alleges as follows:

23 96. Plaintiff repeats and realleges paragraphs 1 through 95 as though set forth
24 in full.

1 97. As more fully alleged in paragraphs 39-49, in and/or around November
2 2003, Defendants failed to control or restrain the diseased domestic goats that they had
3 placed on the La Osa range, thereby causing the epizootic episode that killed at least
4 twenty-one (21) Desert Bighorn Sheep.

5 98. Pursuant to A.R.S. § 17-102, wildlife in the State is public property, which
6 can be killed only as authorized by law.

7 99. Pursuant to A.R.S. § 17-314, the Game and Fish Commission may recover
8 civil damages against persons who unlawfully kill certain wildlife, including bighorn
9 sheep. Killing of wildlife is unlawful when not expressly permitted by law.

10 100. The minimum statutory damages under A.R.S. § 17-314 for unlawfully
11 killing bighorn sheep is \$750.00 per animal. The statute places no upper limit on
12 damages that may be sought by the Game and Fish Commission.

13 101. Defendants unlawfully killed at least twenty-one (21) bighorn sheep within
14 the meaning of A.R.S. § 17-314, thereby subjecting Defendants to civil damages for each
15 bighorn sheep killed.

16 **EIGHTH CAUSE OF ACTION**
17 **(Wrongful Destruction of Wildlife—Negligence per se)**

18 For its Eighth Cause of Action, Plaintiff, on behalf of the Game and Fish
19 Commission, alleges as follows:

20 102. Plaintiff repeats and realleges paragraphs 1 through 101 as though set forth
21 in full.

22 103. As alleged in paragraph 45, on information and belief, to reach the area
23 used by the Silver Bell Herd, Defendants' goats trespassed on State Trust Lands not
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1 leased by Defendants, federal lands not leased by Defendants, and lands leased by
2 Defendants pursuant to the BLM leases attached as Exhibits B and C.

3 104. In or around November 2003, Defendants repeatedly violated A.R.S. §§ 37-
4 501(1) and 37-502 by trespassing on state lands by grazing goats thereon without a lease
5 or sublease approved by the State Land Department for the area being grazed.

6 105. In or around November 2003, Defendants repeatedly violated 43 C.F.R. §
7 4140.1, prohibiting the non-willful grazing on public lands without a permit.

8 106. In or around August-December 2003, Defendants repeatedly violated 43
9 C.F.R. § 4140.1(a)(1) by violating the special terms and conditions of the BLM grazing
10 leases, namely: "To protect desert bighorn sheep: no domestic goat grazing will be
11 authorized on public lands within 9 miles surrounding desert bighorn sheep habitat."

12 107. Defendants' violation of A.R.S. §§ 37-501(1) and 37-502 and 43 C.F.R. §
13 4140.1 constitutes negligence per se.

14 108. As a direct and proximate result of Defendants' negligence per se,
15 Defendants' goats caused the epizootic episode referred to in paragraph 46.

16 109. As a further direct and proximate result of Defendants' negligence per se,
17 the State suffered significant damages, including but not limited to the injury to and death
18 of its bighorn sheep, the expense of responding to the epizootic episode and lost
19 revenues.

20 110. Expenses incurred by the State to date in responding to the epizootic
21 episode are approximately \$70,000, not including lost revenues.

22 111. There is a reasonable probability that the State will incur future expenses,
23 including expenses associated with the restoration of the Silver Bell Herd.

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NINTH CAUSE OF ACTION
(Wrongful Destruction of Wildlife—Negligence)

For its Ninth Cause of Action, Plaintiff, on behalf of the Game and Fish Commission, alleges as follows:

112. Plaintiff repeats and realleges paragraphs 1 through 111 as though set forth in full.

113. Having caused the domestic goats to be located on the La Osa range, Defendants owed a duty to the State to protect the desert bighorn sheep in the Silver Bell Herd from unreasonable harm caused by the goats.

114. Defendants failed to exercise due care in controlling or restraining the domestic goats, with the result that numerous goats escaped from the La Osa range.

115. As a direct and proximate result of Defendants' negligence, the escaped domestic goats intermingled with the desert bighorn sheep in the Silver Bell Herd, thereby causing the epizootic episode.

116. As a further direct and proximate result of Defendants' negligence, the State suffered significant damages, including but not limited to the injury to and death of its bighorn sheep, the expense of responding to the epizootic episode and lost revenues. There is a reasonable probability that the Plaintiff will incur future expenses, including expenses associated with the restoration of the Silver Bell Herd.

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TENTH CAUSE OF ACTION
(South Fork Property Violations)

For its Tenth Cause of Action, Plaintiff, on behalf of ADEQ, alleges as follows:

117. Plaintiff repeats and realleges paragraphs 1 through 116 as though set forth in full.

1 118. The South Fork is a tributary of the Little Colorado, which is a tributary to
2 the Colorado River. The South Fork, the Little Colorado, and the Colorado River are
3 navigable waters within the meaning of A.R.S. § 49-201(21), and are surface waters of
4 the State as defined by A.A.C. R18-11-101.43.

5 119. By discharging the contents of the constructed impoundments as alleged in
6 paragraph 53, Defendants discharged well drilling fluids, fines, cuttings and sediment
7 from well drilling and construction activities into the Little Colorado and, therefore,
8 violated A.R.S. § 49-241.B.9, which prohibits point source discharges to navigable
9 waters without an aquifer protection permit.

10 120. A.A.C. R18-11-108(A)(1) is a narrative water quality standard of the State
11 of Arizona that requires a surface water to be free from pollutants in amounts or
12 combinations that settle to form bottom deposits that inhibit or prohibit habitation,
13 growth, or propagation of aquatic life. As more fully alleged in paragraph 54,
14 Defendants violated this rule on or before September 12, 2001 by discharging topsoil,
15 sediment and vegetative material into the South Fork and displacing sediment within the
16 South Fork.

17 121. A.A.C. R18-11-108(A)(8) is a narrative water quality standard of the State
18 of Arizona that requires a surface water to be free from pollutants in amounts or
19 combinations that change the surface water natural background levels of color. This rule
20 was violated on or about August 7 through August 9, 2001 by the discharge of drilling
21 fluids, cuttings and fines from the man-made impoundments into the Little Colorado, and
22 by the discharging of topsoil, sediment and vegetative material into the South Fork and
23 displacing sediment within the South Fork observed on September 12, 2001.

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1 122. Former A.A.C. R18-11-109(F) set a limit on turbidity for surface waters of
2 the State of ten (10) nephelometric turbidity units (NTUs) per liter. Defendants violated
3 this rule on September 12, 2001. The analytical results for samples of surface water
4 collected by ADEQ in the South Fork on September 12, 2001, indicated turbidity levels
5 upstream of Defendants' discharges and construction activity to be 3.85 NTUs, and at a
6 location downstream thereof, in the South Fork, to be 143 NTUs, far in excess of the
7 standard.

8 123. A.R.S. § 49-262.C provides that any person who violates any provision of
9 Article 2, 3 or 3.1 of Chapter 2 of Title 49, or a rule adopted pursuant thereto, is subject
10 to a civil penalty of not to exceed \$25,000 per day per violation. Accordingly, pursuant
11 to A.R.S. § 49-262.C, Defendants are subject to civil penalties of \$25,000 per day for
12 each of the violations cited in paragraphs 119-122 above.

13 WHEREFORE, Plaintiff, State of Arizona, prays for judgment against the
14 Defendants as follows:

15 1. All present and future damages arising out of Defendants' trespasses to
16 State Trust Lands in an amount to be proven at trial, including but not limited to all
17 damages arising out of Defendants': (i) alteration of the surface geography and drainage
18 of the Trespassed Lands; (ii) destruction of and interference with archaeological sites; (ii)
19 destruction of and injury to trees, cacti and other plants; (iii) violation of Arizona's
20 antiquities laws, including A.R.S. §§ 41-841(A), 41-844(A) and 41-843; and (iv)
21 violation of Arizona's Native Plant Act, A.R.S. § 3-908(A).

22 2. All present and future damages to the State arising out of Johnson
23 International's breach of the State Grazing Lease in an amount to be proven at trial,
24 including but not limited to all damages arising out of: (i) Defendants' use of the leased

1 lands for other than livestock grazing and related purposes; (ii) all "waste or loss" caused
2 by Defendants with respect to the said lands, including Defendants' destruction of
3 standing trees; (iii) Defendants' failure to comply with the provisions of the Arizona
4 Native Plant Law and Arizona's antiquity laws on the State Trust Lands; and (iv)
5 Defendants' destruction of and disturbance to cacti or other protected native plants on the
6 leased lands; and (v) Defendants' destruction and disturbance of ruins and/or other
7 archaeological sites in violation of the antiquities laws.

8 3. Treble damages for Defendants' willful violation of A.R.S. §§ 37-501 and
9 502(A) on the Trespassed Lands.

10 4. Civil penalties pursuant to A.R.S. § 3-933 in the amount of \$5,000 for each
11 of Defendants' knowing violations of A.R.S. § 3-908 on the Trespassed Lands.

12 5. Civil penalties pursuant to A.R.S. § 3-933 in the amount of \$5,000 for each
13 of Defendants' knowing violations of A.R.S. § 3-904 and A.A.C. R3-4-602 (recodified as
14 A.A.C. R3-3-1102) on the La Osa Property.

15 6. Civil penalties pursuant to A.R.S. § 49-262(C) in the amount of \$25,000
16 per day for each violation of A.R.S. § 49-255.01(A) and A.A.C.18-9-C901.B committed
17 in connection with Defendants' activities on the Subject Lands.

18 7. Civil penalties pursuant to A.R.S. § 49-262(C) in the amount of \$25,000 for
19 each day of violation of A.R.S. § 49-241.B.9 and A.A.C. R18-11-108(A)(1), (A)(8) and
20 former A.A.C. R18-11-109(F) on the South Fork Property.

21 8. All present and future damages arising out of the epizootic episode in an
22 amount to be proven at trial, including but not limited to: (i) damages for the loss of
23 twenty-one (21) Desert Bighorn Sheep, (ii) expenses incurred by the State in response to
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1 the epizootic episode; (iii) lost revenues; and (iv) expenses to be incurred in restoring the
2 Silver Bell Herd.

3 9. Civil damages pursuant to A.R.S. § 17-314 in the amount to be proven at
4 trial for each bighorn sheep unlawfully killed by Defendants.

5 10. Plaintiff's costs of investigating Defendants' conduct alleged herein and the
6 damages caused thereby.

7 11. Plaintiff's taxable costs and costs of litigation, including attorneys' fees as
8 authorized by A.R.S. § 49-262(D), A.R.S. § 12-341.01, and A.R.S. § 17-314.

9 12. Preliminary and permanent injunctive relief requiring Defendants to
10 perform such acts as may be necessary to prevent irreparable harm to the State and to
11 bring Defendants into compliance with applicable law.

12 13. Granting such other relief as the Court deems just and proper.

13
14 DATED this 14th day of February, 2005.

15
16 TERRY GODDARD
Attorney General

17 By: 
18

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