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Arizona Corporation Commission

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Attorneys for Johnson Utilities Company

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BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION
9 OF JOHNSON UTILITIES COMPANY'S
10 REQUEST FOR CLARIFICATION OR
11 MODIFICATION OF DECISION NO. 64062
12 PURSUANT TO A.R.S. § 40-252

DOCKET NO. WS-02987A-99-0583
WS-02987A-00-0618

**JOHNSON UTILITIES COMPANY'S
APPLICATION TO MODIFY DECISION
NO. 64062**

13 Johnson Utilities Company, Inc. ("JUC" or "Company") hereby requests that the
14 Commission modify Decision No. 64062 (October 4, 2001) (the "Decision") and make permanent
15 all portions of the extended CC&N granted to the Company in that order. The Commission has
16 the authority to modify the Decision pursuant to A.R.S. § 40-252 and JUC respectfully suggests
17 that it is in the public interest to grant the relief requested herein.

18 In support of its application, JUC states as follows:

19 1. JUC serves approximately 5,000 water and wastewater customers in Pinal County.
20 Attached hereto as Exhibit 1 is a map illustrating the various CC&Ns the Commission has granted
21 in the area over the past seven (7) years since the Company's original CC&N was granted on May
22 27, 1997.

23 2. The Decision granted JUC CC&N extensions for both water and wastewater
24 service in portions of Pinal County. See Exhibit 1. At the same time, the Commission granted
25 similar relief to H2O Inc. ("H2O"), Diversified Water Utilities, Inc. ("Diversified") and Queen
26

1 Creek Water Company (“Queen Creek”). JUC was the only entity granted authority to provide
2 wastewater utility services in the areas subject to the Decision.

3 3. In the Decision, the Commission adopted Staff’s recommendation and ordered that
4 that JUC file a request for “Certificate Review” within two years. Decision at ¶ 153. In addition,
5 the Commission directed Utilities Division Staff (“Staff”) to file a report to the Commission
6 within 120 days after receiving the Company’s request for a Certificate Review containing one of
7 the following three recommendations: 1) final approval for all parcels included in the CC&N; 2)
8 final approval for portions of the parcels approved with cancellation of the undeveloped portions
9 of the parcels; or 3) disapproval of the CC&N. *Id.*

10 4. JUC filed its request for Certificate Review on October 3, 2003 as required by the
11 Decision. Copy attached hereto as Exhibit 2. Staff has performed a physical plant inspection,
12 and JUC has provided Staff with information necessary to show that approximately \$9.5m has
13 been invested to serve the subject area parcels granted in the Decision.

14 5. In a May 17, 2004 report, Staff concluded that JUC is in compliance with all the
15 requirements and conditions from all applicable Commission decisions, including Decision Nos.
16 63960, 64062 and 65840 respectively. See Staff Report, Docket Nos. WS-02987A-99-0583, WS-
17 02987A-00-0618, *et al.* JUC is in compliance with all other Commission requirements, including
18 compliance with ADEQ, Pinal County and the Arizona Department of Water Resources rules and
19 regulations.

20 6. The development and construction of water and wastewater systems requires
21 considerable advanced and integrated planning, especially in areas of rapid growth and
22 development, like JUC’s CC&N. The Commission has recognized the advantages and economies
23 of scale achieved by larger providers that utilize regionalized planning as a method for orderly

24 ¹ Color-coded in red are the parcels conditionally granted to JUC in the Decision for either water or wastewater
25 service, or both. The Company was granted a CC&N for wastewater in Parcel 2, but not water, and also provides
26 wastewater service in H2O’s water service area, represented on the map by the areas shaded in green (present CC&N)
and yellow (pending CC&N). The map also depicts existing and proposed water lines and water plants, in addition to
some of the 18-19 wells connected to the Company’s water distribution system.

1 growth. See Decision No. 62993 (November 3, 2000), *In the Matter of the Arizona Corporation*
2 *Commission's own Motion to Establish the Commission Water Task Force*. Absent such an
3 approach, the risk of redundant infrastructure increases. Further, smaller utilities are finding it
4 more difficult and cost-prohibitive to comply with federal and state regulation, including safe
5 drinking water regulations that require substantial capital investment and increased operating
6 expenses. Such costs cannot be effectively recovered from a small customer base.

7 7. The project status and amount of plant investment associated with each of the
8 twenty-three (23) parcels included in the CC&N Extension's granted by the Decision is identified
9 and described in the attached Status Report recently provided to Staff. See Exhibit 3.² The
10 Status Report provides information on the amount and cost of water and wastewater infrastructure
11 already built to serve each of these expansion areas, as well as the current level of developer
12 activity associated with each parcel. Specifically, the Status Report indicates, among other
13 things:

- 14 a. For thirteen (13) of the twenty-one (21) parcels, PADs have been approved,
15 engineering has commenced and builders are performing due diligence.
16 b. For six (6) of the twenty-one (21) parcels, PADs have been approved,
17 engineering plans and plats have been approved, subdivisions are under
18 construction and model homes are currently open.
19 c. The remaining two (2) parcels contain lot splits and "wildcat" subdivisions,
20 with homes being sold and occupied in these areas.

21 8. The Company has invested \$9,451,816 to build infrastructure in Parcel Nos. 1
22 (Arizona Farms), 2 (Bella Vista Farms - wastewater only), 6 (Morning Sun Farms), 9 (Farley) and
23 11 (Circle Cross Ranch, west of the railroad). Status Report, Exhibit 3. The Morning Sun Farms
24 Lift-Station, 12" San Tan water line and San Tan heights well were constructed to also serve
25 Parcel Nos. 3 and 12. Similarly, the Pecan Creek wastewater treatment plant, Vineyard Road Lift
26 Station/water line and Circlocross wells 1&2 and water plant constructed in Parcel 11 will also
serve Parcel Nos. 5, 14, 15, 16, 17, 18, 20 and 22. *Id.* In summary, the Status Report illustrates

² Parcels 10 and 13 were withdrawn from the application.

1 JUC's approach to regionalized planning in an effort to provide its water and wastewater
2 customers safe, reliable and affordable utility service.

3 9. Real estate development involves a multi-step process in obtaining various state,
4 county and local regulatory and administrative approvals, planning for future water and
5 wastewater infrastructure to serve a rapidly growing population cannot be conducted in a vacuum.
6 Utilities themselves are often subject to various, and sometimes overlapping federal, state and
7 county approvals prior to constructing for and serving new developments. Staff recognized the
8 importance of advanced and integrated planning in a November 26, 2003 Staff Report³ on a
9 separate wastewater CC&N extension application. Staff writes:

10 Wastewater collection and treatment cannot be approached in a
11 fragmented manner. Instead, it demands an area wide planning
12 and coordination between publicly-owned treatment works, cities,
13 sanitary districts and privately-owned wastewater treatment plants.
14 Pursuant to that goal, Section 208 of the Federal Water Pollution
15 Control Act (Public Law 92-500) provided for the preparation of
16 'Certified Water Quality Management Plans' and the designation
17 of entities to manage sewage treatment facilities and sewage
18 collection systems in the respective planning area. The Central
19 Arizona Association of Governments ('CAAG') is the designated
20 water quality planning agency for the requested CC&N areas in
this application. CAAG has the authority to develop and approve
general wastewater plans which include land development policies,
service areas, objectives, principles and standards for local growth
and development...Critical weight was given to the planning
documents, because the applicant has requested wastewater service
territories, *in advance of much actual construction and service.*
[Emphasis added]

21 10. Likewise, the area under development often dictates the planning horizon for the
22 construction of water distribution facilities. In undeveloped or underdeveloped areas of rapid
23 growth, new infrastructure such as public roads and utility service lines is often constructed in an
24 ad-hoc or orderly manner. Because JUC's present service area and surrounding territory is
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26 ³ Docket Nos. W-03576A-03-0586, SW-03575A-03-0586

1 experiencing rapid growth, the Company has taken a more regionalized approach in planning and
2 constructing for future development. The Company charges a hook-up fee to ensure that present
3 customers are shielded from funding new infrastructure, and the investment of approximately
4 \$9.5m to accommodate growth in the parcels granted to JUC by the Decision is part of the
5 Company's regionalized planning strategy, which will ultimately provide the Company's
6 customers with the benefits larger water and wastewater system providers can bring – reliability,
7 financial viability and economies of scale.

8 11. As builders and developers in the areas subject to the CC&N extensions granted in
9 the Decision conduct due diligence and prepare to begin constructing homes, the need to finalize
10 main extensions and continue the task of building utility infrastructure is readily apparent.
11 Unfortunately, the liability issues inherent in moving forward with development in the subject
12 parcels without assurance that the Company's CC&N will be made permanent places JUC and its
13 customers at risk. The Commission's decision that JUC will be the certificated service provider
14 will eliminate such risks, and will also provide regulatory certainty to the Commission and its
15 Staff, JUC, developers and other governmental regulatory bodies (i.e., CAAG, CAGR and
16 DWR) involved in the planning of the area's water and wastewater infrastructure needs.

17 12. For the reasons stated herein, JUC asserts that a decision of the Commission
18 granting final approval for all parcels included in the CC&N extensions granted by Decision No.
19 64062 is in the public interest.

20 WHEREFORE, JUC respectfully requests the following:

21 A. That the Commission proceed to consider and act upon this Application as
22 expeditiously as possible and to schedule a hearing, if necessary, on this matter at the earliest
23 possible date;

24 B. That upon completion of said hearing the Commission enter its order granting final
25 approval for all parcels included in the CC&N extensions granted by Decision No. 64062; and

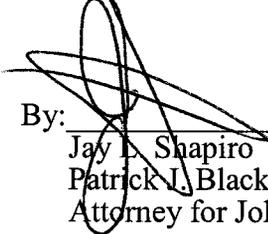
26 C. That the Commission grant such other and further relief as may be appropriate

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under the circumstances herein.

DATED this 6th day of July, 2004.

FENNEMORE CRAIG, P.C.



By: _____
Jay L. Shapiro
Patrick J. Black
Attorney for Johnson Utilities Company

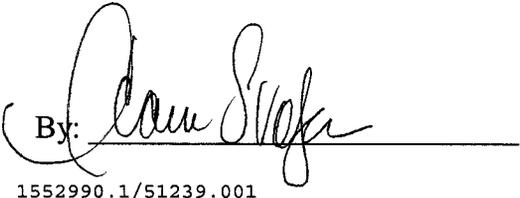
ORIGINAL and 15 copies of the
foregoing delivered this 6th
day of July, 2004, to:

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