

ORIGINAL



0000004079

30

MEMORANDUM RECEIVED

2004 JUN 29 P 3: 03

TO: Docket Control  
FROM: Ernest G. Johnson *EGJ*  
Director  
Utilities Division

AZ CORP COMMISSION  
DOCUMENT CONTROL

Date: June 29, 2004

RE: ARIZONA UTILITY SUPPLY & SERVICES, INC. APPLICATION FOR TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO JOHNSON UTILITIES L.L.C. (DOCKET NO. WS-02987A-04-0465 AND SW-04002A-04-0465)

Attached is the Staff Report for Arizona Utility Supply & Services, Inc. application for the transfer of certain of its assets to Johnson Utilities L.L.C., cancellation of its, and extension of Johnson Utilities, L.L.C. Certificate of Convenience and Necessity ("CC&N"). Staff recommends approval of the transfer of assets, extension of the Johnson Utilities L.L.C. CC&N and cancellation of the AUSS CC&N.

EGJ:JEF:lhv

Originator: Jim Fisher

Arizona Corporation Commission

DOCKETED

JUN 29 2004

DOCKETED BY	<i>CAR</i>
-------------	------------

Service List for: Arizona Utility Supply & Services, Inc. and Johnson Utilities, L.L.C.  
Docket Nos. WS-02987A-04-0465 and SW-04002A-04-0465

Mr. Maurice Lee  
Managing Member  
Arizona Utility Supply & Services, LLC  
4002 East Taro Lane  
Phoenix, Arizona 85050

Mr. Jeffery Zimmerman  
Moyes Store  
1850 North Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
Attorney of Arizona Utility Supply & Services, LLC

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorney of Johnson Utilities L.L.C.

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ARIZONA UTILITY SUPPLY & SERVICES, INC.  
APPLICATION FOR APPROVAL OF THE TRANSFER  
OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO JOHNSON UTILITIES L.L.C.

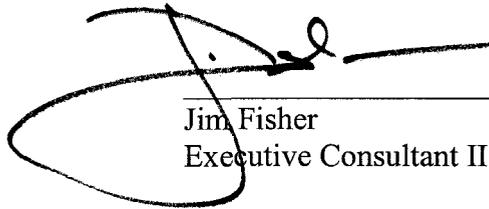
DOCKET NOS.  
WS-02987A-04-0465 AND SW-04002A-04-0465

June 2004

## STAFF ACKNOWLEDGEMENT

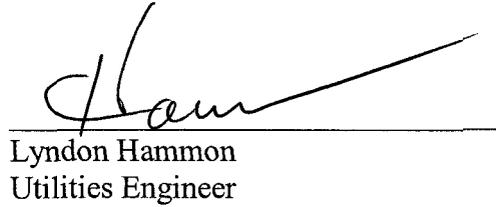
The Staff Report for Arizona Utility Supply & Services, L.L.C. and Johnson Utilities, L.L.C. (Docket Nos. WS-02987A-04-0465 and SW-04002A-04-0465) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analysis of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



---

Jim Fisher  
Executive Consultant II



---

Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.**  
**AND JOHNSON UTILITIES L.L.C.**  
**DOCKET NOS. WS-02987A-04-0465 and SW-04002A-04-0465**

On June 22, 2004, Arizona Utility Supply and Service, L.L.C. (“AUSS” or “Company”) filed an application with the Arizona Corporation Commission (“ACC” or “Commission”) to transfer its Certificate of Convenience and Necessity (“CC&N”) to Johnson Utilities L.L.C. (“Johnson”). On May 17, 2004, in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837, Staff filed a report recommending the Commission approve AUSS’ application to transfer a portion of its CC&N to Johnson. Staff also requested the Commission to authorize a Show Cause proceeding in which AUSS would be required to show cause to retain its CC&N.

On May 4, 2004, Arizona Department of Environmental Quality (“ADEQ”), Staff and representatives of Johnson discussed AUSS’ operational problems and Johnson’s ability to provide a possible solution. On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson’s ability to resolve immediate concerns.

On June 9, 2004, Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent. On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement (“Agreement”) which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson. AUSS agreed to pay Johnson \$30 for each residential service and \$3.53 per 1,000 gallons of effluent treated. AUSS provided a security deposit of \$25,000.

By this application, AUSS is seeking Commission authorization to transfer certain of its assets to Johnson. AUSS is seeking to cancel its CC&N and Johnson is seeking to extend its CC&N to include the area currently certificated to AUSS. The Agreement provides, in part, that upon Commission approval of the AUSS transfer, AUSS will execute a bill of sale to convey title, at no cost to Johnson, other than developer refund obligations. AUSS is required to demonstrate all conveyed facilities are free and clear of all encumbrances, have proper permits and located in recorded easements.

Staff recommends that the Commission approve AUSS’ Application to transfer its used and useful assets to Johnson Utilities, L.L.C. subject to the following conditions:

1. That AUSS and Johnson Utilities L.L.C. file with Docket Control documentation of closing the sale of assets within 180 days of any decision in this matter. The documentation shall include a detailed list of the assets transferred.
2. That AUSS and Johnson Utilities L.L.C. file with Docket Control monthly reports on the wastewater treated, amounts billed, and amounts paid for service until the asset transfer is closed. The monthly reports shall be due 15 days after each calendar month.

3. That AUSS file by December 31, 2005, with Docket Control, evidence of satisfying the terms and conditions of the Arizona Department of Environmental Quality Closure Agreement related to AUSS' wastewater facilities.

Staff recommends that the Commission authorize Johnson Utilities L.L.C. to extend its CC&N consistent with the attached legal description upon notice of closing the transfer with AUSS.

Staff recommends that the Commission cancel AUSS' CC&N consistent with the attached legal description

TABLE OF CONTENTS

	<u>Page</u>
<b>Introduction</b> .....	1
<b>Background</b> .....	2
<b>Bulk Wastewater Treatment Agreement</b> .....	2
<b>Summary</b> .....	4
<b>Recommendations</b> .....	4

ATTACHMENTS

Engineering Map and Legal Description .....	A
ADEQ letter of May 6, 2004, to Johnson Utilities, Re: AUSS.....	B
AUSS-Johnson Utilities Bulk Wastewater Agreement.....	C
Staff letter of June 24, 2004, to Johnson Utilities, Re: Emergency Service – AUSS.....	D
Johnson Utilities letter of June 24, 2004, Re: Intent of Application.....	E
May 17, 2004, Staff Report in Docket No. SW-04002A-02-0837 and WS-02987A-02-0837 .....	F

## **Introduction**

On June 22, 2004, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to transfer its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities L.L.C. ("Johnson"). On June 24, 2004, Johnson provided Staff a letter of explanation which clarified the intent of the application is to transfer certain assets, extend Johnson's CC&N to include the AUSS service territory and cancel the AUSS CC&N.

On May 17, 2004, Staff filed a report recommending the Commission approve AUSS' application to transfer Section 22 to Johnson. Staff also requested the Commission to authorize a Show Cause proceeding in which AUSS would be required to show cause to retain its CC&N in light of its Arizona Department of Environmental Quality ("ADEQ") and Commission violations. (See Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837.)

On May 4, 2004, ADEQ, Staff and representatives of Johnson discussed AUSS' operational problems and Johnson as a possible solution to the issues.

On June 3, 2004, a Procedural Order was issued in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 setting the matter for a July, 9, 2004, hearing.

On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson's ability to resolve immediate concerns for public safety.

On June 8, 2004, Staff requested the hearing date established for Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 be accelerated.

On June 9, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson's ability to resolve immediate concerns. Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent.

On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson.

On June 17, 2004, a Procedural Order was issued in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837, setting the matter for a July, 16, 2004, hearing in response to scheduling conflicts and Johnson's elimination of the emergency situation.

On June 22, 2004, AUSS filed its application for Commission approval to transfer all of the CC&N to Johnson.

## **Background**

AUSS is an Arizona Limited Liability Company (“LLC”) which is owned by Mr. Maurice Lee and Mr. Stephan Kohner. Mr. Kohner’s ownership in AUSS is through his ownership in STM Holdings, LLC, which owns SAK Investments LLC, which owns SAK Family Limited Partnership, which owns interest in AUSS. In Decision No. 64288 (December 31, 2001), the Commission authorized AUSS to provide wastewater service to five sections within Pinal County; specifically, Sections 19, 20, 21, 22 and 30 of Township 2 South of Range 8 East.

Johnson is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&Ns in Decision Nos. 61069 (August 7, 1998), 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

By this application, AUSS and Johnson are seeking Commission authorization to transfer certain assets, extend Johnson’s CC&N to include the AUSS service territory and cancel the AUSS CC&N. AUSS is currently scheduled for a hearing on July 16, 2004, in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837. Staff issued a report on the application May 17, 2004, which provides a complete background on AUSS’ and Johnson. The report recommended approval of the transfer of a portion of the existing CC&N and sought Commission approval to begin a show cause proceeding against AUSS.

Staff recommends that this Staff Report be read in conjunction with the May 17, 2004 AUSS Staff Report.

## **Bulk Wastewater Treatment Agreement**

On May 4, 2004, ADEQ, Staff and representatives of Johnson discussed AUSS’ operational problems and Johnson as a possible solution to the issues. AUSS’ treatment facilities were unable to properly treat wastewater flows resulting in approximately 2 million gallons of effluent that exceeded regulatory standards and was not allowed to be discharged. AUSS’ treatment ponds were close to capacity.

Johnson’s service territory is adjacent to AUSS. Johnson has constructed and interconnected three wastewater treatment plants (“WWTP”) to serve the CC&N. Johnson is able to take AUSS wastewater and effluent for re-treatment, into its system and treat the flows at either the Pecan Water Reclamation Plant (“WRP”), or at the Section 11 WWTP.

On May 4, 2004, ADEQ, Staff and Johnson discussed Johnson’s ability to begin treatment of AUSS’ wastewater. Johnson agreed to take AUSS wastewater flows on a temporary basis.

On May, 6, 2004, Ms. Karen Smith, Director Water Quality Division of the ADEQ wrote Johnson to confirm ADEQ's position on Johnson's services for AUSS. Ms. Smith wrote in part:

To confirm our understanding, Johnson Utilities will accept wastewater and effluent from the AUSS service area, on a temporary basis, to eliminate the existing problems in that area, specifically at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station.

The Department agrees that Johnson Utilities will not be held responsible for any violations of environmental regulations which have occurred or are now occurring within the AUSS service area, and are not responsible for the odor and operational problems at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station, or any other facility owned and operated by AUSS.

Again, let me extend our appreciation for the assistance Johnson Utilities is providing to alleviate this very problematic situation.

On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the ongoing operational problems of AUSS and Johnson's concerns with AUSS. Johnson and AUSS were unable to resolve wholesale rates and charges for the services Johnson provided AUSS, resulting in Johnson treating in excess of 2 million gallon without compensation. AUSS informed ADEQ, Staff and Johnson that terms for service were unacceptable. Johnson informed AUSS that service could not continue without a compensation agreement.

On June 8, 2004, Staff requested the hearing date established for Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 be accelerated.

On June 9, 2004, ADEQ, Staff, representatives of Johnson and AUSS again discussed the operational problems of AUSS, Johnson's concerns with AUSS and Johnson's ability to resolve the problem. AUSS and Johnson discussed a proposed service agreement with Staff and ADEQ. AUSS, Johnson, Staff and ADEQ supported the agreement. Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent.

On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement ("Agreement") which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson.

According to the Agreement, Johnson is willing to provide limited bulk wastewater and effluent treatment to AUSS and AUSS acknowledged that it lacks adequate wastewater treatment capacity. The Agreement is for a term of 180 days or until the Commission authorizes the transfer of Section 22. Effluent disposal is for a term of 30 days from date of the Agreement,

and Johnson has the right to terminate effluent treatment service upon 10 days notice if effluent materially interferes with the operation of Pecan WRP.

AUSS agreed to pay Johnson \$30 for each residential service and \$3.53 per 1,000 gallons of effluent treated. AUSS provided a security deposit of \$25,000. AUSS also assigned its accounts receivable and provided Johnson with the option to direct bill customers in the event AUSS defaults on the Agreement.

According to Section C. of the Agreement, AUSS desires to transfer all of its useful assets and CC&N to Johnson. Section 7.b. provides that upon Commission approval of the AUSS transfer, AUSS will execute a bill of sale to convey title, at no cost to Johnson, other than developer refund obligations. AUSS is required to demonstrate all conveyed facilities are free and clear of all encumbrances, have proper permits and located in recorded easements.

On June 21, 2004, ADEQ informed Staff that one of the once almost overflowing effluent ponds had been drained.

### **Summary**

AUSS has failed to operate per the terms and condition of its CC&N. ADEQ requested Johnson to provide service to AUSS to eliminate effluent discharge and odor problems plaguing AUSS' service territory. On June 11, 2004, AUSS and Johnson agreed to terms on service and transferring the CC&N to Johnson.

Johnson operates a wastewater treatment plant that is providing service to the public consistent with the requirements of the ADEQ and the Commission. Transferring the assets of AUSS to Johnson, canceling the AUSS CC&N, and extending Johnson Utilities Company CC&N to include the area will ensure proper wastewater service is provided.

### **Recommendations**

Staff recommends that the Commission approve AUSS Application to transfer its used and useful assets to Johnson Utilities Company subject to the following conditions:

1. That AUSS and Johnson Utilities L.L.C. file with Docket Control documentation of closing the sale of assets within 180 days of any decision in this matter. The documentation shall include a detailed list of the assets transferred.
2. That AUSS and Johnson Utilities L.L.C. file with Docket Control monthly reports on the wastewater treated, amounts billed, and amounts paid for service until the asset transfer is closed. The monthly reports shall be due 15 days after each calendar month.

3. That AUSS file by December 31, 2005, with Docket Control, evidence of satisfying the terms and conditions of the Arizona Department of Environmental Quality Closure Agreement related to AUSS' wastewater facilities.

Staff recommends that the Commission authorize Johnson Utilities L.L.C. to extend its CC&N consistent with the attached legal description upon notice of closing the transfer with AUSS.

Staff recommends that the Commission cancel AUSS' CC&N consistent with the attached legal description

**MEMORANDUM**

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: June 28, 2004

RE: **ARIZONA UTILITY SUPPLY & SERVICES, LLC (DOCKET NO. SW-04002A-04-0465)**  
**JOHNSON UTILITIES COMPANY (DOCKET NO. WS-02987A-04-0465)**

Arizona Utility Supply & Services has filed an application to transfer its CC&N to Johnson Utilities Company. A copy of the legal description for the area to be transferred is attached. This description transfers all of Arizona Utility's service area except Section 22, Township 2 South, Range 8 East, Pinal County, which is being transferred in a separate docket.

Also attached is a copy of the map for your files.

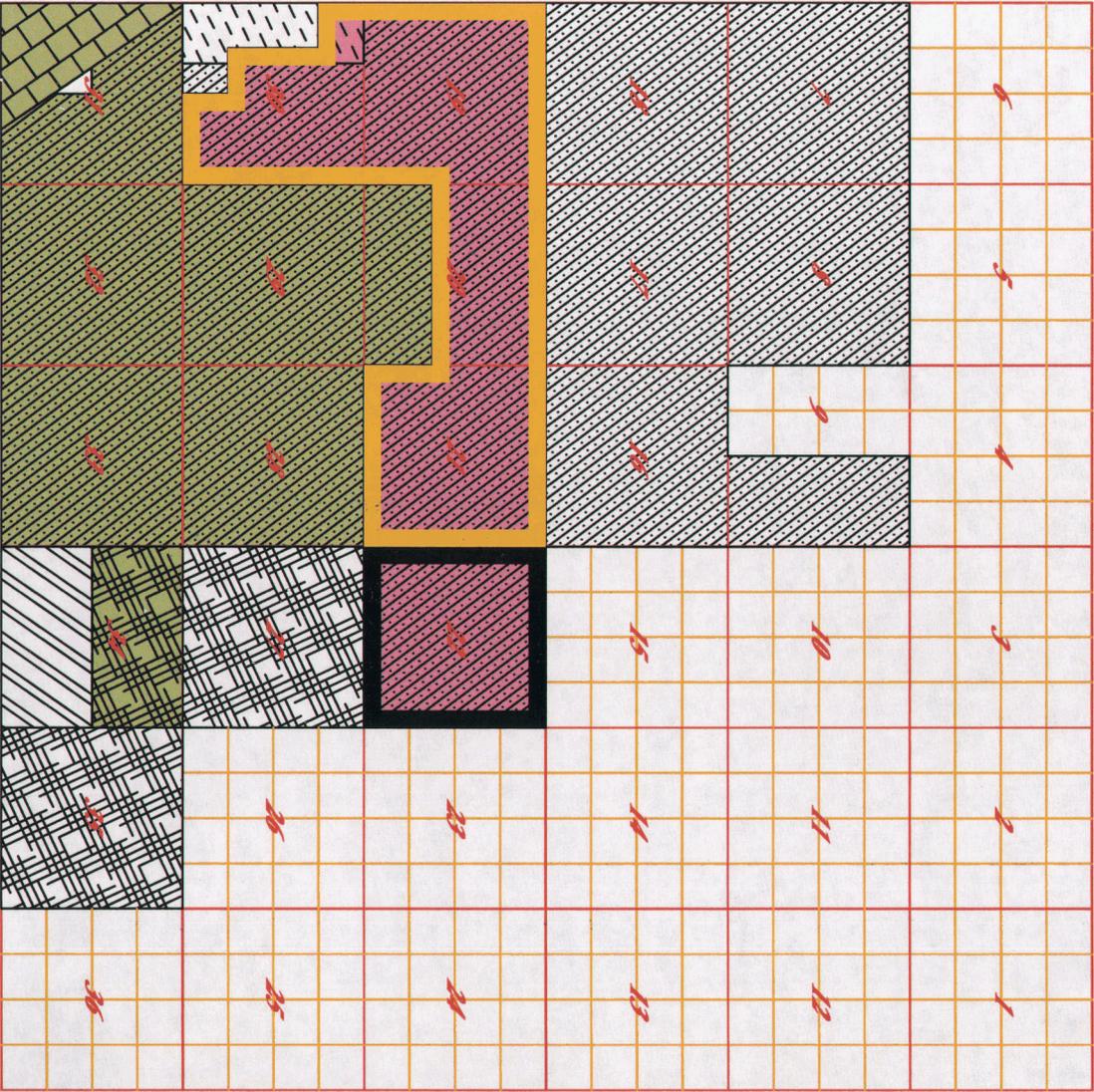
:bsw

Attachment

cc: Docket Control  
Mr. Maurice Lee  
Mr. Jay Shapiro  
Ms. Deb Person (Hand-Carried)  
File

# COUNTY: Pinal

## RANGE 8 East



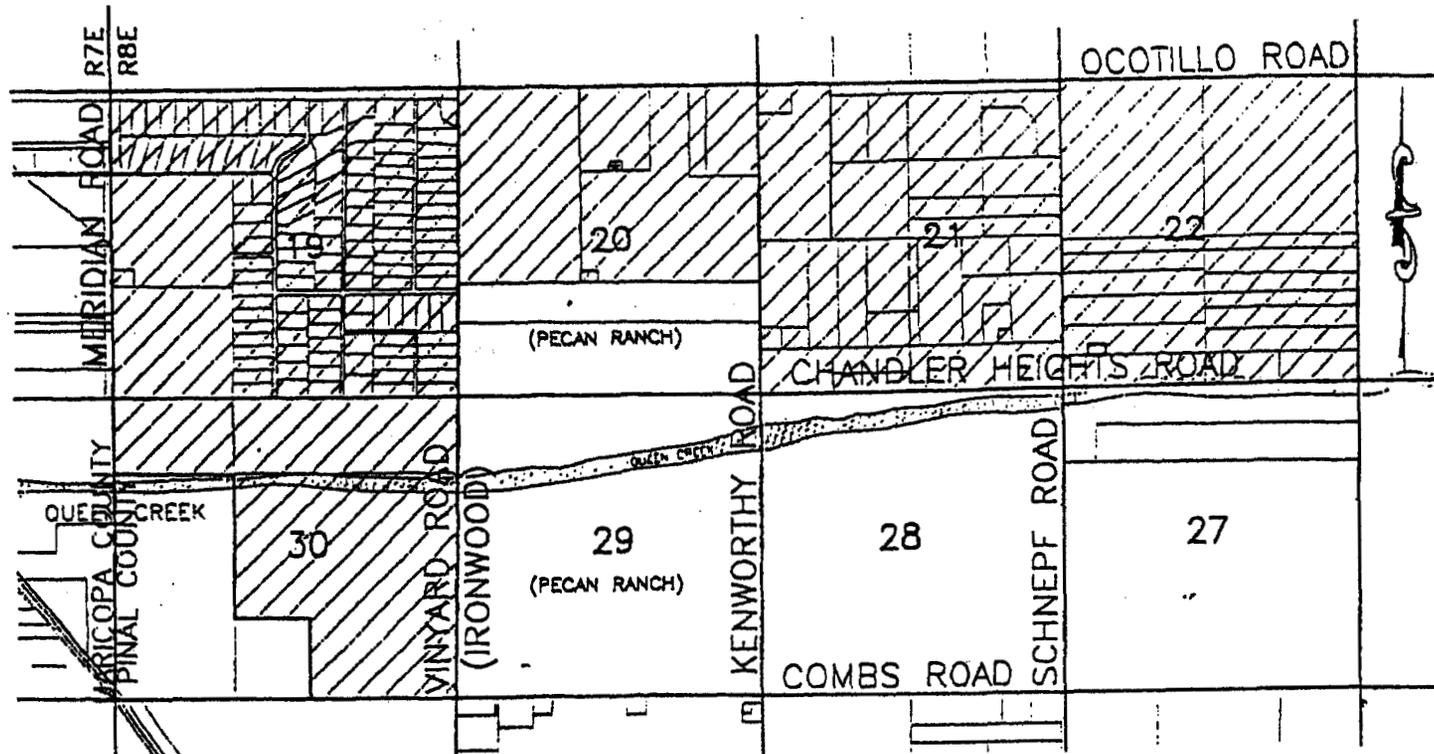
## TOWNSHIP 2 South

-  WS-2987 (6)
-  Sewer
-  Sewer
- SW-4002 (1)
- Arizona Utility Supply & Services, LLC
-  W-2859 (3)
- Diversified Water Utilities, Inc.
-  W-2234 (2)
- H<sub>2</sub>O, Inc.
-  W-1395 (2)
- Queen Creek Water Company
-  W-2425 (2)
- Sun Valley Farms Unit VI Water Company
- 
- Arizona Utility Supply & Services
- Docket No. SW-4002-02-837
- Application to Transfer to Johnson Utilities
- Docket No. WS-2987-02-837
- 
- Arizona Utility Supply & Services
- Docket No. SW-4002-04-465
- Application to Transfer to Johnson Utilities
- Docket No. WS-2987-04-465

# ARIZONA UTILITY SUPPLY & SERVICES, LLC

## LEGAL DESCRIPTION FOR

Application to  
Transfer of Convenience and Necessity  
SW-04002A



## LEGAL DESCRIPTION

ALL OF SECTIONS 19, 20, 21, AND 30, T. 2S., R. 8E. OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THAT PORTION OF SECTION 30 IN THE TOWN LIMITS OF QUEEN CREEK AS DESCRIBED AS FOLLOWS:

BEGINNING at the SW corner of Section 30, Township 2 South, Range 8 East of the Gila & Salt River Base & Meridian, Pinal County, Arizona; thence East along the south line of said Section 30 to the south  $\frac{1}{4}$  corner of said Section 30, also being the SE corner of GLO Lot No. 12, a distance of 3,308.58 feet more or less; thence North along the north/south mid-section line of said Section 30, also being the east line of GLO Lot No. 12, a distance of 1,320 feet more or less to the SE corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the NE corner of GLO Lot No. 12; thence West along the south line of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the north line of GLO Lot No. 12, to the SW  $\frac{1}{4}$  corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the NW corner of GLO Lot No. 12 a distance of 1,320 feet more or less; thence North along the west line of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  and the west line of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of said Section 30, also being the east line of GLO Lot Nos. 8 and 5, a distance of 2,640 feet more or less to the SW corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of said Section 30, also being the NE corner of GLO Lot No. 5; thence West along the south line of the N  $\frac{1}{2}$  of the of the N  $\frac{1}{2}$  of said Section 30 a distance of 2,009.70 feet more or less to the west line of said Section 30, also being the NW corner of GLO Lot No. 4; thence South along the west line of said section 30, a distance of 3,960 feet to THE POINT OF BEGINNING .



Janet Napolitano  
Governor

ARIZONA DEPARTMENT  
OF  
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.adeq.state.az.us



Stephen A. Owens  
Director

**RECEIVED**

MAY 11 2004

AZ CORPORATION COMMISSION  
DIRECTOR OF UTILITIES

May 6, 2004

Brian Tompsett, P.E.  
Executive Vice-President  
Johnson Utilities Company, L.L.C.  
5230 E. Shea Blvd.  
Scottsdale, AZ 85254

Dear Mr. Tompsett:

Thank you for your letter of May 5<sup>th</sup>, confirming Johnson Utilities' willingness to assist the Department resolve an intolerable operation and odor problem at the Links Wastewater Treatment facility in northern Pinal County, operated by AUSS.

To confirm our understanding, Johnson Utilities will accept wastewater and effluent from the AUSS service area, on a temporary basis, to eliminate the existing problems in that area, specifically at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station. The Department agrees that this addition of flow to the Johnson Utilities' system will not result in a deduction from the "paper approval" of subdivisions within the Johnson Utilities' service area. We understand this temporary service agreement between Johnson Utilities and AUSS applies only to those areas within AUSS' existing Certificate of Convenience and Necessity (CC&N) approved areas, including that portion of Section 20 (Links and Cambria), and Sections 21 and 22, Township 2 South, Range 8 East. The temporary service agreement does not apply to any potential expansion of the AUSS service area.

The Department agrees that Johnson Utilities will not be held responsible for any violations of environmental regulations which have occurred or are now occurring within the AUSS service area, and are not responsible for the odor and operational problems at the Links WWTP, the Meadow Vista WWTP or the Cambria Lift Station, or any other facility owned and operated by AUSS.

Again, let me extend our appreciation for the assistance Johnson Utilities is providing to alleviate this very problematic situation.

Sincerely,

Karen L. Smith  
Director, Water Quality Division

C: James Fisher, ACC  
Michele Robertson, ADEQ  
Michael Traubert, ADEQ

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

**BULK WASTEWATER TREATMENT  
AND EFFLUENT DISPOSAL AGREEMENT**

**BETWEEN**

**ARIZONA UTILITY SUPPLY & SERVICES, LLC**

**AND**

**JOHNSON UTILITIES, L.L.C.  
dba JOHNSON UTILITIES COMPANY**

**June 11, 2004**



This BULK WASTEWATER TREATMENT AND EFFLUENT DISPOSAL AGREEMENT ("Agreement") dated this 11th day of June, 2004, is between Arizona Utility Supply & Services, L.L.C. ("AUSS"), an Arizona limited liability company, and Johnson Utilities, L.L.C. dba Johnson Utilities Company, an Arizona limited liability company ("JUC"), and pertains to bulk wastewater treatment and effluent disposal services provided by JUC.

## RECITALS

A. AUSS holds a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("Commission") and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona as shown in Exhibit A. AUSS is unable to treat all of the wastewater flows generated within portions of its CC&N and to dispose of all effluent generated from wastewater treatment services provided within its CC&N.

B. JUC also holds a CC&N issued by the Commission and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona. JUC owns wastewater treatment plants, including a plant known as the Pecan Water Reclamation Plant ("Pecan WRP"), which plant is located in the vicinity of AUSS's CC&N as shown on Exhibit A. The Pecan WRP has been approved by the Central Arizona Association of Governments ("CAAG") under the CAAG Clean Water Act § 208 Plan and has an Aquifer Protection Permit ("APP") approved by Arizona Dept. of Environmental Quality ("ADEQ"). JUC is willing to provide limited bulk wastewater treatment service to AUSS and will, upon execution of this Agreement, take steps to promptly initiate such service to AUSS in Section 22 of AUSS's CC&N as shown on Exhibit A. JUC is also willing to temporarily receive and dispose of effluent generated from the treatment of wastewater within AUSS's CC&N. Both services, the bulk treatment of wastewater and the disposal of effluent, will be provided by JUC to AUSS on an interim basis under the terms and conditions of this Agreement.

C. AUSS has already filed an application with the Commission seeking deletion of Section 22 as shown on Exhibit A from its CC&N and transfer of said property into JUC's CC&N. Now, however, AUSS desires to transfer all of its CC&N to JUC and JUC is willing to accept a transfer of the entirety of AUSS's CC&N, if such transfer is approved by the Commission, and to accept the conveyance of any and all facilities currently being used by AUSS and necessary for JUC to provide safe and reliable wastewater utility service in the area currently covered by AUSS' CC&N. Accordingly, AUSS will, upon execution of this Agreement, promptly take steps to request transfer of its entire CC&N to JUC and, upon approval to transfer all or part of the CC&N, will take steps to convey all necessary utility facilities to JUC in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties have entered into this Agreement for and consideration of the mutual covenants, warranties, and representations and agree as follows:



## AGREEMENTS

1. Incorporation of Recitals. By this reference, the parties hereby agree to incorporate the recitals above as part of the terms and conditions of this Agreement as if fully set forth herein.

2. Bulk Treatment of Wastewater. AUSS acknowledges and agrees that it lacks adequate wastewater treatment capacity to treat wastewater flows from all customers in its CC&N. JUC represents and warrants that it has excess wastewater treatment capacity in the portion of its CC&N that is adjacent to and in the vicinity of AUSS's CC&N and JUC agrees, on an interim basis, to accept wastewater flows from and to treat the wastewater generated within Section 22 of AUSS's CC&N as shown on Exhibit A attached hereto and incorporated herein by this reference. AUSS will take all necessary steps to ensure that wastewater flows delivered to JUC under this Agreement originate in Section 22 and that no wastewater from other portions of AUSS's CC&N are delivered to JUC for treatment until such time as the Commission approves the transfer of AUSS's CC&N to JUC. JUC will treat such flows at its Pecan WRP, or at any other wastewater treatment facility it may designate, provided however, that AUSS will not be responsible for construction of additional facilities necessary to deliver flows from AUSS's CC&N to a treatment facility other than the Pecan WRP.

3. Bulk Treatment and/or Disposal of Effluent. "Effluent" refers generally to the water reclaimed from the treatment of wastewater. AUSS acknowledges and agrees that it lacks capacity to treat and/or dispose of effluent generated by its treatment of wastewater from all customers in its certificated service area. JUC represents and warrants that it has excess capacity to treat and/or dispose of such effluent and JUC agrees to accept effluent generated from wastewater treatment by AUSS in its CC&N and to treat and/or dispose of such effluent in a manner of its choosing so long as such treatment and/or disposal is in compliance with all applicable law and regulation. AUSS further agrees that, after the first 30 days after execution of this Agreement, all effluent thereafter delivered to JUC under this Agreement shall be of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant. Upon request of JUC, AUSS shall furnish evidence of testing to show that such effluent meets the discharge quality standard agreed to herein. After the first 30 days after execution of this Agreement, JUC may, in JUC's sole discretion, but JUC shall have no obligation to, accept effluent of a lower quality than required by this Agreement.

4. Fees for Wastewater Treatment and Effluent Disposal Services; Security Deposit; Billing and Collection.

a. Fee for Wastewater Treatment Services. Wastewater flows to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of wastewater

transmitted to JUC by AUSS for treatment and disposal. JUC will charge AUSS a bulk treatment and disposal services fee equal to \$30.00 for each residential dwelling generating wastewater for treatment by JUC under this Agreement.

b. Fee for Effluent Disposal Services. Effluent deliveries to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of effluent delivered to JUC by AUSS for additional treatment and disposal. JUC will charge AUSS a bulk effluent disposal fee equal to \$3.53 per 1000 gallons of effluent treated and/or disposed of by JUC under this Agreement.

c. Security Deposit. JUC acknowledges receipt of Twenty-Five Thousand Dollars (\$25,000) from AUSS, which amount is intended to represent twice the estimated monthly cost of wastewater treatment and effluent disposal services provided by JUC under this Agreement. This amount shall be held by JUC as a security deposit during the period this Agreement remains in effect and then returned to AUSS upon its termination unless applied at such time to outstanding amounts owed to JUC by AUSS under this Agreement. The parties further agree that the amount of the security deposit will be reviewed after 90 days and adjusted upward if it is determined that the average monthly cost of bulk wastewater treatment and effluent disposal services during the first 90 days the Agreement exceeds \$12,500, at which time AUSS shall promptly increase the security deposit to an amount that equals twice the average monthly cost of the services being provided by JUC hereunder during the first 90 days the Agreement is in effect.

d. Assignment of Accounts Receivable. In order to secure payment of the bulk treatment and effluent disposal services fees to JUC, AUSS herein assigns to JUC AUSS's accounts receivable, including, without limitation, monthly billings from customers in AUSS's CC&N, and agrees to take all additional steps required by JUC to perfect such assignment.

e. Optional Remedy for Non-Payment by AUSS. In the event of default by AUSS of any of the payment obligations of this Agreement, JUC shall have the right to provide billing and collection services for AUSS and for all AUSS customers. AUSS shall pay JUC \$2.00 per customer billed by JUC. Such billing and collection service shall be undertaken by JUC as agent for AUSS and in the same or materially similar manner as JUC currently bills its own customers, except that bills sent to AUSS's customers shall be in accordance with AUSS's Commission-approved tariff and in a format that as closely as possible matches the billing format currently used by AUSS. JUC shall provide AUSS with a monthly remittance equal to the total amount collected from all AUSS customers by JUC less the total combined monthly cost of services provided by JUC to AUSS hereunder plus billing and collection services provided by JUC to AUSS under this Agreement. JUC shall provide AUSS a detailed invoice of such charges each month at the time JUC remits collections from AUSS customers to AUSS. JUC shall remit to AUSS the collections of monies collected for AUSS less said cost at the time of the next billing cycle on a monthly basis. JUC shall also provide AUSS a



monthly customer account status report. AUSS shall be solely responsible for collection of any delinquent amounts from its customers.

f. Monthly Reporting. On or before the fifth of each month this Agreement remains in effect, AUSS shall provide a reconciliation report to the Commission's Utilities Division Staff. This reconciliation report shall state: (1) the number of gallons of wastewater delivered by AUSS to JUC for bulk treatment under this Agreement in the preceding month; (2) the number of gallons of effluent delivered by AUSS to JUC for treatment and/or disposal under this Agreement in the preceding month; (3) whether the effluent delivered to JUC under this Agreement in the preceding month was of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant; 4) the amount paid to JUC by AUSS in the preceding month for services provided under this Agreement; and (5) whether AUSS is current on all of its payment obligations under this Agreement.

5. Termination of Bulk Wastewater Treatment and Effluent Disposal Services.

a. Termination of Bulk Wastewater Treatment Services. The provision of bulk wastewater treatment services under this Agreement shall terminate the earlier of 1) 180 days following execution of the Agreement, at which time JUC's obligation to accept and treat wastewater flows from Section 22 of AUSS's CC&N under this Agreement shall terminate without further action by the parties; or 2) an order of the Commission extending JUC's CC&N to include any portions of AUSS's CC&N, at which time JUC shall charge customers receiving wastewater treatment services from JUC in accordance with its own Commission-approved tariffs of rates and charges.

b. Termination of Effluent Disposal Services. JUC shall provide effluent disposal services to AUSS for a period of 30 days after execution of this Agreement. Thereafter, JUC shall have the right to terminate provision of effluent disposal services at anytime after this Agreement is executed upon 10 days written notice to AUSS if such effluent disposal services materially interfere with the proper operation of the Pecan WRP.

6. Regulatory Compliance and Approvals.

a. Pecan WRP. JUC shall be responsible for all permits and approvals associated with the construction and operation of the Pecan WRP and represents and warrants that it will make reasonable efforts to maintain such compliance with all applicable laws and regulations during the time this Agreement is in effect. AUSS agrees to cooperate as requested by JUC to provide information related to the generation of wastewater flows within its CC&N and AUSS's facilities and operations.

b. CAAG 208 Approval. The Pecan WRP is authorized under the current CAAG 208 Plan, as amended.

c. Commission Approval. The parties believe that specific Commission approval of this Agreement is not required. In the event Commission approval is required or sought by either party, the parties agree to cooperate fully in any proceedings before the Commission or any other agency or tribunal.

7. Transfer of CC&N; Transfer of Facilities.

a. Transfer of AUSS's CC&N. AUSS acknowledges that JUC's willingness to enter into this Agreement is expressly contingent on and in consideration for AUSS's intention to seek Commission approval to transfer all of its CC&N to JUC. AUSS has filed an application seeking deletion of Section 22 from its CC&N and transfer of that section into JUC's CC&N. AUSS agrees to promptly take steps to seek approval of the Commission to delete and transfer the entirety of AUSS's CC&N to JUC and, following such modification, to diligently prosecute said application. JUC agrees to provide cooperation in such proceeding as necessary to effectuate the transfer of AUSS's CC&N to JUC.

b. Conveyance of Facilities. Upon approval of the ACC to transfer all or part of AUSS's CC&N to JUC, AUSS will execute a bill of sale and/or other necessary documentation to convey title to all facilities necessary for JUC to provide permanent wastewater utility services within the portions of AUSS's CC&N transferred to JUC by the ACC. Such conveyance shall be at no cost to JUC, provided, however, that at the time of conveyance, JUC will accept an assignment of any obligation of AUSS to pay refunds to developers associated with such facilities. At the time of the conveyance, AUSS shall also provide documentation evidencing that all facilities being conveyed are (1) free and clear of all liens and encumbrances; (2) subject to all necessary governmental approvals and (3) located in public utility easements or other rights-of-way. AUSS shall take steps to ensure that all rights held by AUSS in such easements and/or rights-of-way are transferred to JUC along with any regulatory approvals and permits. AUSS acknowledges and agrees that JUC shall have no obligation to accept a transfer of all or portions of its CC&N, and to initiate permanent wastewater utility services in such areas, until the steps required in this paragraph are completed to JUC's reasonable satisfaction.

8. Indemnity and Hold Harmless Agreement. AUSS shall indemnify and hold JUC harmless from, and defend JUC against (by legal counsel chosen by JUC) all claims, actions, causes of action, assertions, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, of any kind or nature brought by a third party, including any property owner of other customer in AUSS's CC&N or regulatory agency asserting jurisdiction, arising out of or related to AUSS's failure to perform its obligations under this Agreement.

9. Notice. All notices and other written communications required hereunder shall be sent to the parties as follows:



Johnson Utilities Company  
Attn: George Johnson  
5230 East Shea Blvd.  
Scottsdale, AZ 85254

Arizona Utility Supply & Services, LLC  
Attn: Maurice Lee  
P.O. Box 30543  
Phoenix, AZ 85046-0543

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

10. Default. Any claim that AUSS or JUC is in default or breach of this Agreement shall be in writing and sent via certified-return receipt United States mail to the address provided in paragraph 7 above. No default shall become effective until ten (10) days from the date of mailing, during which time the party claimed to be in default shall have an opportunity to cure the alleged default.

11. Good Standing; Authority to Execute. AUSS, and its representatives signing hereinbelow, represent and warrant to JUC, that AUSS is duly formed and validly existing under the laws of Arizona and that the individuals executing this Agreement on behalf of AUSS are authorized and empowered to bind AUSS.

12. Attorneys' Fees. The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement of thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

13. Time of the Essence. Time is of the essence of every provision hereof.

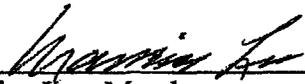
14. Miscellaneous. This Agreement shall be governed by the laws of the State of Arizona. This Agreement, and each and every term and condition contained herein, shall be binding upon and inure to the benefit of the successors and assigns of AUSS and JUC. This Agreement sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them with respect to the provision of bulk wastewater treatment services and/or effluent disposal services, except as otherwise expressly provided herein. The Line Extension Agreement dated November 15, 2002 by and between JUC, AUSS and the developers of the Castlegate subdivision located in Section 22 of AUSS's CC&N is not amended or superseded in any manner by this Agreement, nor do JUC or AUSS waive or release any claims they may have regarding that agreement. No change in, addition to, or waiver of any provisions of this Agreement shall be binding upon either party unless in writing and signed by both parties. The remedies provided in this agreement shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either party of any breach of this agreement nor any failure by either party to insist on strict performance by the other party of any provision of this agreement shall in any way be

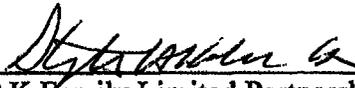
*[Handwritten signature]*

construed to be a waiver of any future or subsequent breach by such defaulting party or bar the non-defaulting party's right to insist on strict performance by the defaulting party of the provisions of this agreement in the future.

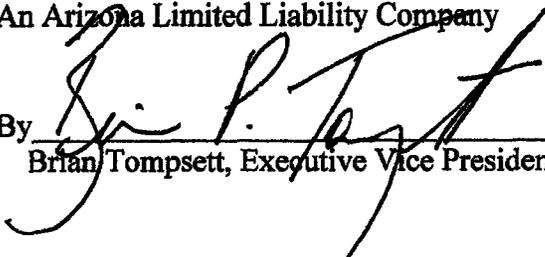
IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first above written.

ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.,  
An Arizona Limited Liability Company

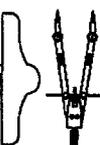
By   
Maurice Lee, Member

By   
SAK Family Limited Partnership, Member

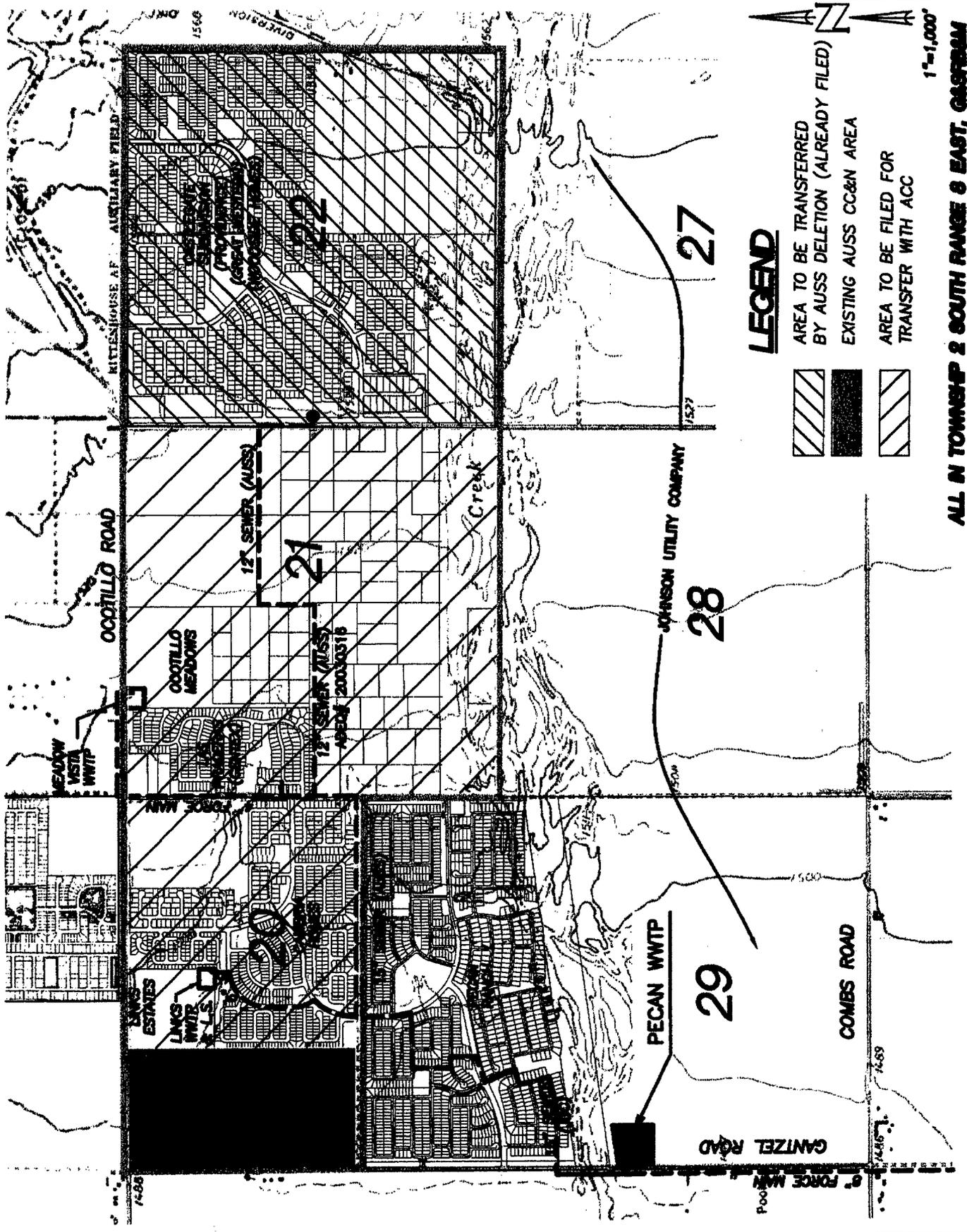
JOHNSON UTILITIES, L.L. C.,  
An Arizona Limited Liability Company

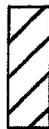
By   
Brian Tompsett, Executive Vice President

1555087.1



**EXHIBT A**



- LEGEND**
-  AREA TO BE TRANSFERRED BY AUSS DELETION (ALREADY FILED)
  -  EXISTING AUSS CC&N AREA
  -  AREA TO BE FILED FOR TRANSFER WITH ACC

1"=1,000'

**ALL N TOWNSHIP 2 SOUTH RANGE 8 EAST, GAZDRAH**

**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



BRIAN C. MCNEIL  
Executive Secretary

**ARIZONA CORPORATION COMMISSION**

June 24, 2004

Mr. George Johnson  
President  
Johnson Utilities Company, LLC  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Re: Emergency service to Arizona Utility Supply and Service, LLC ("AUSS")

Dear Mr. Johnson,

Thank you for your commitment to the public interest in acting to resolve AUSS's inability to treat and dispose of its wastewater. Your quick action, in cooperation with the Arizona Department of Environmental Quality (ADEQ) and Utilities Division Staff ("Staff") averted AUSS' effluent ponds from overflowing and creating environmental damage.

Staff is fully supportive of Johnson Utilities Company's ("JUC") actions to take wastewater and effluent flows from AUSS on an emergency interim basis prior to the Commission's consideration of the pending application to transfer Section 22 from AUSS to JUC. Staff has reviewed the emergency service agreement and believes the agreement protects the public by providing the appropriate interim solution to ensure wastewater flows are treated and service providers are compensated. Staff will file the JUC emergency service agreement with AUSS, ADEQ's May 6, 2004 letter of support and this letter in the transfer docket to update the record.

Staff understands that compliance, finance and other issues remain outstanding with regard to full resolution of any subsequent JUC-AUSS transaction, and you will file an application subsequent to resolution on those issues.

Again, thank you for your proactive stance and cooperation in the temporary resolution of this problem.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Johnson", with a long horizontal flourish extending to the right.

Ernest Johnson  
Director  
Utilities Division

LAW OFFICES  
**FENNEMORE CRAIG**  
A PROFESSIONAL CORPORATION

**JAY L. SHAPIRO**

Direct Phone: (602) 916-5366  
Direct Fax: (602) 916-5566  
jshapiro@fclaw.com

**RECEIVED**

JUN 25 2004

ARIZONA CORPORATION COMMISSION  
DIRECTOR OF UTILITIES

June 24, 2004

OFFICES IN:  
PHOENIX, TUCSON,  
NOGALES, AZ; LINCOLN, NE  
3003 NORTH CENTRAL AVENUE  
SUITE 2600  
PHOENIX, ARIZONA 85012-2913  
PHONE: (602) 916-5000  
FAX: (602) 916-5999

**VIA FACSIMILE AND US MAIL**

Jim Fisher  
Executive Consultant  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Re: Johnson Utilities, L.L.C. – Initiation of Wastewater Utility Service in  
Certificated Service Area of AUSS by Johnson Utilities

Dear Mr. Fisher:

As you know, Arizona Utility Supply & Services (“AUSS”) recently filed a second application concerning the relinquishment of its CC&N. I will not take up your valuable time by going through all of the pertinent background on the “AUSS matter” as you are already quite familiar with the facts. However, I did want to provide some clarification concerning Johnson Utilities’ views and intentions with respect to its initiation of wastewater utility service in the AUSS CC&N.

By way of clarification, Johnson Utilities does not intend to acquire any ownership interest in AUSS for a variety of reasons, including the fact that my client is not willing to assume or otherwise subject itself to any liability of AUSS. Moreover, while Johnson Utilities remains willing to become the certificated wastewater utility service provider in the area currently covered by AUSS’s CC&N, as evidenced by its June 10, 2004 agreement with AUSS, it is Johnson Utilities intention to provide such utility service under the same terms and conditions, i.e., Commission-approved tariff schedules, as wastewater utility service is presently being provided throughout its own certificated service area.

Thus, while both the AUSS applications and the AUSS/Johnson Utilities agreement speak of a “transfer” of AUSS’s CC&N to Johnson Utilities, I concur that it makes more sense, as you have already concluded, to avoid a “transfer” of the existing CC&N to Johnson Utilities,

# FENNEMORE CRAIG

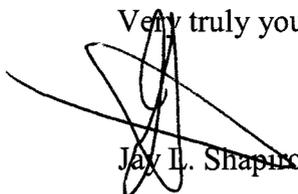
Jim Fischer  
June 24, 2004  
Page 2

which, could imply that Johnson Utilities is simply stepping into AUSS's shoes as the CC&N holder. Instead, as I understand Staff is recommending, Johnson Utilities would support, and in fact would prefer to see the Commission simultaneously approve: (1) the deletion of AUSS's current CC&N; (2) the transfer of AUSS's assets, used and necessary in providing wastewater utility service, to Johnson Utilities pursuant to A.R.S. § 40-285; and (3) the extension of Johnson Utilities' existing CC&N to include the area currently covered by and included in AUSS's CC&N.

I do not believe this approach constitutes a material modification of the existing applications. In fact, I think it is fair to say that, but for the choice of terminology in the applications and agreement, this is what the parties have contemplated all along. For example, we understand that ADEQ is working with AUSS on a closure plan that would effectively take out of service any and all wastewater utility facilities that Johnson Utilities will not need to provide wastewater utility services in AUSS's currently certificated service area. Thus, with the collective support of Staff, AUSS and Johnson Utilities, I am confident that the Commission can issue its order simultaneously accomplishing each of these actions spelled-out above.

Please let me know if you have any comments or questions, or whether any additional materials are needed by Staff to prepare its Staff Report.

Very truly yours,



Jay L. Shapiro

JLS/mlh

cc: Brian Tompsett  
Steve Olea  
Jeff Zimmerman  
Jason Gellman

1559399.1

MEMORANDUM RECEIVED

2004 MAY 17 A 10: 10

TO: Docket Control  
Arizona Corporation Commission

FROM: Ernest G. Johnson  
Director  
Utilities Division

AZ CORP COMMISSION  
DOCUMENT CONTROL

Date: May 14, 2004

RE: ARIZONA UTILITY SUPPLY & SERVICES, INC. AMENDED  
APPLICATION FOR TRANSFER OF A PORTION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO JOHNSON UTILITIES L.L.C.  
(DOCKET NO. SW-04002A-02-0837 AND WS-02987A-02-0837)

Attached is the Staff Report for Arizona Utility Supply & Services, Inc. application for the Transfer of a Portion of its Certificate of Convenience and Necessity to Johnson Utilities L.L.C. Staff recommends approval of the transfer of a portion of the Certificate of Convenience and Necessity.

EGJ:JEF:hml

Originator: Jim Fisher

Service List for: Arizona Utility Supply & Services, Inc. and Johnson Utilities, L.L.C.  
Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837

Mr. Maurice Lee  
Managing Member  
Arizona Utility Supply & Services, Inc.  
4002 E. Taro Lane  
Phoenix, Arizona 85050

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Ave.  
Suite 2600  
Phoenix, Arizona 85012  
Attorney of Johnson Utilities L.L.C.

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ARIZONA UTILITY SUPPLY & SERVICES, INC.  
APPLICATION FOR APPROVAL OF THE TRANSFER  
OF A PORTION OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO JOHNSON UTILITIES L.L.C.

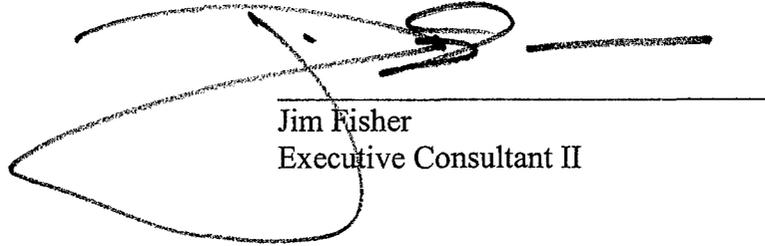
DOCKET NOS.  
SW-04002A-02-0837  
AND  
WS-02987A-02-0837

May 2004

## STAFF ACKNOWLEDGEMENT

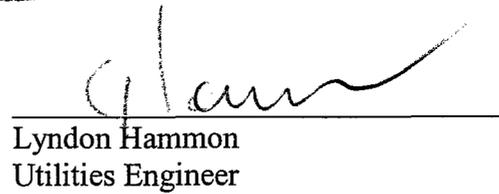
The Staff Report for Arizona Utility Supply & Services, L.L.C. (Docket Nos. SW-04002A-02-837 WS-02987A-02-0837) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



A handwritten signature in black ink, appearing to read 'Jim Fisher', is written over a horizontal line. The signature is stylized and somewhat abstract.

Jim Fisher  
Executive Consultant II



A handwritten signature in black ink, appearing to read 'Lyndon Hammon', is written over a horizontal line. The signature is cursive and clearly legible.

Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.**  
**DOCKET NOS. SW-04002A-02-837**  
**WS-02987A-02-0837**

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On November 12, 2002, AUSS filed an application with the Commission requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson"), an authorized water and wastewater provider in portions of Pinal county.

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County. AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the Central Arizona Association of Governments ("CAAG") 208 Plan. AUSS is also seeking Commission authority to transfer Section 22 of its authorized CC&N to Johnson, as the CAAG 208 Plan has authorized Johnson to serve Section 22.

The Clean Water Act is a commitment by the federal government to the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control. CAAG has been designated the area wide water quality management planning agency for the Pinal and Gila County areas.

In conjunction with the requirements of the Clean Water Act, ADEQ issued Johnson an Aquifer Protection Permit ("APP"). On October 23, 2003, ADEQ completed its last Annual Compliance Inspection for Johnson's Wastewater Treatment Plant ("WWTP") to ensure Johnson was operating per the requirements of the APP and Reuse Permit. ADEQ found Johnson in compliance with all requirements.

The CAAG 208 Plan determined that Section 22 will be better served by a larger regional water reclamation plant, Pecan Water Reclamation Plant ("WRP"). AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004, to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction, and therefore, any compliance issues should be removed.

On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP. ADEQ issued AUSS a Notice of Violation ("NOV") for its failure to operate a

subsurface disposal of effluent. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field. ADEQ believes that AUSS has directed excess effluent to the leach field and caused standing effluent. ADEQ's November 20, 2003, NOV also found AUSS had not complied with operation and maintenance requirements, nor complied with monitoring and reporting requirements.

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision, a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.

Staff recommends that the Commission Cancel AUSS CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to show cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

TABLE OF CONTENTS

	<u>Page</u>
<b>INTRODUCTION.....</b>	1
<b>BACKGROUND .....</b>	1
<b>AUSS FAILURE TO FILE ACC ANNUAL REPORT .....</b>	2
<b>AUSS - NOTICE OF VIOLATION .....</b>	2
<b>JOHNSON UTILITIES.....</b>	3
<b>JOHNSON’S ADEQ COMPLIANCE STATUS.....</b>	3
<b>JOHNSON’S ACC COMPLIANCE STATUS.....</b>	4
<b>AUSS REQUEST TO MODIFY DECISION NO. 64288 .....</b>	5
<b>CAAG 208 APPROVAL.....</b>	6
<b>ADEQ PERMITS.....</b>	7
<b>PECAN WATER RECLAMATION PLANT .....</b>	8
<b>AUSS PROPOSED TRANSFER TO JOHNSON.....</b>	9
<b>SUMMARY .....</b>	9
<b>RECOMMENDATIONS.....</b>	10

ATTACHMENTS

<b>ENGINEERING MAP.....</b>	1
-----------------------------	---

## **Introduction**

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On February 25, 2002, AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which wastewater treatment plant assets are located, rather than the sixty (60) days provided by the Commission in the original decision.

On November 12, 2002, AUSS filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson").

On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. On May 16, 2003, AUSS filed its revenue statements.

On August 27, 2003, AUSS filed an amended application with the Commission requesting approval of the transfer of a portion of its CC&N to Johnson. On September 26, 2003, Staff informed AUSS that the Amended Application was insufficient for administrative purposes and requested additional information from the applicant. On August 27, 2003, AUSS also filed an application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

On December 29, 2003, AUSS filed an amended request, asking the Commission to provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288 (December 31, 2001).

On March 17, 2004, AUSS withdrew its application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

## **Background**

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County, specifically Sections 19, 20, 21, 22 and 30 of Township 2 South of Range 8 East.

By this application AUSS is seeking Commission authorization to modify the compliance requirements of Decision No. 64288 and transfer Section 22 of its CC&N to Johnson. The transfer area is generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield.

AUSS is a Commission authorized wastewater provider and subject to the rules and regulations of the Commission. AUSS is currently providing service to the public.

### **AUSS Failure to File ACC Annual Report**

AUSS is required to file an Annual Report with the Commission by April 15 of each year per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. To date AUSS has not filed its Annual Report due April 15, 2003. On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report.

On April 16, 2003, Staff informed AUSS the Annual Report was due April 15 of each year and that any variance of the rule would require an order from the Commission. Staff further informed AUSS of the need to file the report and the related statements of revenue by May 1, 2003. AUSS was informed that statements of revenue are required by Arizona law to enable Staff to calculate the regulatory assessment.

On May 16, 2003, AUSS filed its revenue statements informing the Commission that the Company had obtained \$452,411 for the year ending December 31, 2002.

As of April 14, 2004, AUSS has not filed the required Annual Report or requested any variance from A.A.C. R14.-2-610.D.4.

### **AUSS - Notice of Violation**

On September 17, 2002, the Arizona Department of Environmental Quality ("ADEQ") issued AUSS a Notice of Violation ("NOV") based on a site inspection of the Links Estates Wastewater Treatment Plant ("Links WWTP"). On September 16, 2003, ADEQ informed AUSS that most of the items of the NOV had been resolved, except for the transfer of the Aquifer Protection Permit ("APP") to AUSS.

On November 13, 2003, ADEQ issued AUSS another NOV for the unauthorized discharge of effluent to a common area of the Links WWTP. ADEQ had received a complaint of odor and conducted an inspection. On January 27, 2004, ADEQ informed AUSS that the NOV was closed as the Company had complied with ADEQ's requirements.

Subsequently, AUSS directed additional sewage flows to the Links WWTP. As a result the Links WWTP was unable to properly treat the sewage, resulting in what ADEQ has termed an "intolerable situation." On May 6, 2004, ADEQ confirmed an agreement with Johnson Utilities to assist ADEQ in resolving the problems with the AUSS system. Johnson Utilities agreed to accept wastewater and effluent from the AUSS service territory, and according to ADEQ will not be responsible for the odor, operational, or any violations occurring in the AUSS territory. As of May 14, 2004, Johnson Utilities was treating the wastewater and effluent of AUSS without compensation.

The Meadow Vista WWTP is owned and operated by AUSS to serve a portion of the CC&N. AUSS purchased the plant but failed to report to ADEQ in violation of the Arizona Administrative Code. On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP and issued AUSS a NOV for failure to report a change in ownership. ADEQ's also found AUSS had not complied with operation and maintenance requirements, nor had it complied with monitoring and reporting requirements.

On November 20, 2003, ADEQ issued AUSS a NOV for its failure to operate a subsurface disposal of effluent. According to ADEQ, excess effluent from the Links WWTP (discussed above) was transported to the Meadow Vista WWTP for process. In addition, ADEQ previously issued AUSS a temporary permit to "vault and haul" sewage from the Castlegate subdivision, to the Meadows WWTP for treatment. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field and was caused by AUSS directing excess effluent to the leach field and caused standing effluent.

The ADEQ NOV has not been resolved by AUSS.

### **Johnson Utilities**

Johnson is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&Ns in Decision Nos. 61069 (August 7, 1998) 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

The Commission has also denied previous Johnson requests to extend its CC&N, particularly Decision No. 64288 (December 28, 2001) which authorized AUSS the territory subject to this application.

According to Johnson's most recent Annual Report filing with the Commission's Utilities Division, Johnson has installed approximately \$45.8 million in water and wastewater plant to serve the current and future customers in the service area. Johnson reports a combined water and wastewater revenue of \$5.23 million, and reports a combined long term debt of less than \$1 million.

### **Johnson's ADEQ Compliance Status**

As fully explained below, wastewater treatment plants are regulated under a federal, state, and regional system to ensure the proper technology is deployed to meet the current and future needs of the community. Any owner and operator of a WWTP must obtain regional, state and federal approval of the WWTP and its operations, as part of the Clean Water Act.

In conjunction with the requirements of the Clean Water Act, the ADEQ issued Johnson Aquifer Protection Permit ("APP") No. P103081 and Reuse Permit No. R103081 as part of the

environmental permitting required for Johnson's Section 11 Wastewater Treatment Plant. On October 23, 2003, ADEQ completed its most recent Annual Compliance Inspection for Johnson's WWTP to ensure Johnson was operating per the requirements of the APP and Reuse Permit.

According to the ADEQ, 3,689 homes are connected to the sewer system. The WWTP was operating adequately and peak flows have exceeded 450,000 gallons per day ("GPD"). The facility has a design capacity of 1.6 million GPD, and CC&N is anticipated to eventually produce 2.4 million GPD.

The APP was amended June 12, 2002 and required construction of a new compliance monitoring well. Johnson has constructed the required compliance well and submitted the required data to ADEQ. ADEQ noted deficiencies from an October 6, 2003 file review were satisfied by Johnson in the October 23, 2003 inspection.

ADEQ reported that Johnson holds a Reuse Permit which allows the utility to discharge treated effluent, however, Johnson has not discharged to the reuse area, due to the use of the recharge basins.

The Compliance Summary of ADEQ for Johnson shows that the Monitoring and Reporting Requirements, the Reuse Permit, the Operator Certification Requirements, and Operation & Maintenance Requirements are in compliance.

### **Johnson's ACC Compliance Status**

In Decision No. 60233, Johnson was required to comply with eight separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62087, Johnson was required to comply with three separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62284, Johnson was required to demonstrate compliance with ADEQ. According to the Utilities Division Compliance Section, Johnson demonstrated ADEQ compliance on August 25, 2000.

In Decision No. 64062, Johnson was required to comply with seven separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 65480 (April 22, 2003) the Commission found that Johnson had failed to comply with ADEQ requirements and failed to timely inform the Commission of its ADEQ status as required. The Commission recognized Johnson's ADEQ civil penalty of \$80,000, and Consent Agreement as resolution of the compliance issues. The Commission further required

Johnson to file documentation demonstrating ADEQ compliance or any ADEQ violation. In addition the Commission required Staff to conduct an investigation into Johnson and recommend whether an Order to Show Cause against Johnson was warranted.

Johnson has consistently demonstrated that it is providing water and wastewater service to the public in accordance with the rules and regulations of the Commission, and in compliance with ADEQ.

**AUSS Request to Modify Decision No. 64288**

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to a portion of Pinal County, subject to compliance with eight (8) conditions, AUSS has complied with three of the conditions and shown good reason why certain conditions are no longer needed in light of the changed circumstances related to the CAAG 208 regional planning for wastewater treatment.

The 8 conditions imposed on AUSS in Decision No. 64288 were:

1. That AUSS file a tariff of the authorized rates. (Complied)
2. That AUSS refund unauthorized hook-up fees of approximately \$185,000. (Complied)
3. That AUSS file, within 365 days of the effective date of the decision, a copy of its Pinal County franchise. (Complied)
4. That AUSS file, within 365 days of the effective date of the decision a copy of its approved EPA 208 Plan and ADEQ APP. (Non-compliance)
5. That AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant. (Requirement is Moot based on AUSS use of Pecan WTP)
6. That AUSS file, within 2 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Castlegate Plant. (Requirement is Moot based on AUSS use of Pecan WTP and Commission transfer of Section 22)
7. That AUSS file, within 5 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the regional treatment plants. (Requirement should be revised to reflect Pecan WTP)
8. That AUSS file documentation that it has acquired the Links wastewater plant, and the Cambria wastewater plant within sixty days of the decision in this matter, in the event such documentation was not provided in a timely manner,

the Certificate of Convenience and Necessity shall be rendered null and void without further order by the Commission. (Non-compliance)

On February 22, 2002, AUSS filed a status report on compliance with the Commission's Order. AUSS timely filed the tariff rates as required in Finding of Fact No. 78. (Condition 1). Utilities Division Staff found it in compliance with ACC requirements. AUSS also provided a copy of a check in the amount of \$183,467 demonstrating a full refund of the unauthorized Hook-up charges as required by Finding of Fact No. 82. (Condition 2). In addition the Company filed with copies of its Pinal County franchise as required. (Condition 3).

The February 22, 2002 AUSS compliance filing also included the Company's request for a 90 day extension of time to complete negotiations for the transfer of certain wastewater treatment assets to AUSS to comply with Decision No. 64288. (Condition 8)

On February 25, 2002, the Company modified its requested extension of time to comply with evidencing ownership of the utility assets. AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which the Links assets are located, rather than the sixty (60) days provided by the Commission.

To support the request for an extension of time AUSS provided copies of a February 21, 2002 Bill of Sale for the Links system, however, the treatment facility is located on leased property. Pursuant to the agreement with the Ocotillo Homeowners Association, the Company obtained two years with which to relocate the facilities from the leased property.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction and therefore any compliance issues should be removed.

### **CAAG 208 Approval**

The Water Quality Act of 1987 ("Clean Water Act") is a commitment by the federal government towards the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control.

In Arizona, 6 Councils of Government, ("COGs") have been designated by the Governor as "Water Quality Management Planning Agencies" under Section 208 of the Clean Water Act. The Central Arizona Association of Governments ("CAAG") has been designated the area wide water quality management planning agency for the Pinal and Gila County areas. Therefore, AUSS and Johnson are required to offer wastewater service consistent with the CAAG 208 Plan.

The guidelines for 208 planning set forth in the Clean Water Act are fairly broad so that the various water quality issues in different areas of the nation can be addressed appropriately. Each 208 Plan must identify the water quality management needs in its planning area and provide a program to develop solutions. The CAAG 208 planning process is an ongoing effort in response to changing water resource issues, regulations, treatment technologies and changing demographics.

### **ADEQ Permits**

A major effort of the CAAG 208 Plan is the Point Source Plan. Point Source planning is primarily directed at compiling the preferred wastewater collection and treatment system for the Pinal county area through the year 2020. Toward that end, the Point Source Plan examines population and wastewater flow projections, treatment methods, effluent disposal, reclaimed water reuse and sludge management.

ADEQ defines, monitors and enforces water quality standards for protected uses of surface waters, aquifers and public water supplies. The ADEQ permit framework for point source management consists of three primary elements consisting of Arizona Pollutant Discharge Elimination System (“AZPDES”) the APP and the reclaimed water reuse permit program. The purpose of the AZPDES permit programs is to regulate the quality of point source discharges into the waters of the nation. Based on specific criteria, discharges to rivers, dry washes and various lakes and canals within the affected area are subject to the AZPDES permit program provisions.

The APP was established by the Environmental Quality Act of 1986 and implemented by rule in 1989. The purpose of the APP program is to protect the groundwater quality and public health from potential environmental risks posed by the facilities that discharge pollutants to the land surface, underlying soil, or groundwater that have a potential to reach an aquifer.

The APP permitting requirements are determined based on the type of facility or land use, capacity of the facility, and/or the type of discharges that the facility will produce. The most crucial requirements for obtaining an APP are demonstrating that the Best Available Demonstrated Control Technology (“BADCT”) will be used to minimize the discharge of pollutants, Aquifer Water Quality Standards will not be violated and that the facility possesses the financial and technical capability to comply with the permit conditions.

The Environmental Quality Act requires that all domestic wastewater and disposal facilities requiring an APP use BADCT as part of their wastewater treatment process. The ADEQ adopted BADCT requirements for new sewage treatment facilities. The design review of sewage treatment facilities has been consolidated into the APP application review process. The BADCT requirements are defined within the rules for secondary treatment, pathogen removal for new facilities and major modifications to older facilities. The APP rule took effect January 2001.

The reclaimed water use permit program, established in 1985, allows the reuse of reclaimed water for a variety of applications such as agriculture, urban lakes, golf course irrigation, ponds and industrial uses. Water reclamation plants are required by rules to have a reuse permit for the release of reclaimed water for reuse purposes.

There are two main categories of reclaimed water reuse including direct non-potable reuse and indirect reuse. Direct reuse consists of irrigation and makeup water for urban lakes. Indirect reuse typically involves aquifer recharge and recovery. The indirect reuse of reclaimed water usually involves recharge to an aquifer for storage and future recovery. The reclaimed water is typically allowed to infiltrate through the dry soils above the aquifer allowing additional treatment. Recharge projects using reclaimed water are required to obtain an APP.

### **Pecan Water Reclamation Plant**

AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the CAAG 208 Plan. AUSS intended to serve its CC&N with wastewater treatment plants at the Cambria and at Castlegate. AUSS no longer has any need for the construction, or approval of Cambria or Castlewood wastewater treatment plants to participate in Pecan WRP, a larger, CAAG 208 approved regional water reclamation plant.

The CAAG 208 Plan has found that the service area will be better served by a larger regional water reclamation plant, Pecan WRP. AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed the ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

AUSS and Johnson jointly constructed the Pecan WRP. Johnson and AUSS have entered into service agreements by which the companies respective service areas will be served by a regional treatment plant, rather than the previously authorized small plants. Johnson and AUSS have worked cooperatively to obtain regulatory approvals, construct the regional plant, and reconfigure collection facilities to ensure proper service to the community. AUSS and Johnson have also entered into an agreement in which AUSS will construct collection facilities to direct wastewater flows to be treated at the Pecan WRP.

CAAG recognized the long term treatment capabilities of the Pecan WRP will provide a greater benefit to the service area, than would the previously approved smaller waste water treatment plants, including Castlegate and Cambria.

According to the AUSS 208 Plan Amendment of September 2003, the Pecan WRP will be located in Section 29 and initially service approximately 1,280 acres in the planned area development. When the plant is fully developed Pecan WRP will provide service for approximately 10,000 acres of mixed use development extending from Ellsworth Road to Sierra Vista Drive, and Germann Road to Roberts Road.

As described above, the CAAG 208 approval process, in conjunction with state certification, requires that the owners and operators of Pecan WRP obtain the necessary APP, Reuse Permits, BADCT conformance, and AZPDES permit. Staff recommends that the Commission require Johnson to file a copy of the ADEQ APP for the Pecan WRP within 365 days of any decision in this matter.

### **AUSS Proposed Transfer to Johnson**

AUSS is seeking Commission authority to transfer Section 22 of its authorized CC&N, generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield to Johnson. On January 23, 2002, CAAG refused to approve AUSS's Plan 208 Amendment to serve Section 22. The CAAG 208 Plan has authorized Johnson to serve Section 22.

According to the AUSS Amended Application to the Commission, the Company has not begun serving any customers in the proposed transfer area. Therefore, no security deposits have been collected by AUSS in Section 22. In addition, AUSS has not entered into any Main Extension Agreements nor are there any service line refunds due to any customer in Section 22.

On December 29, 2003, AUSS filed a copy of its September 2003 Plan Amendment for the Central Arizona Association of Governments 208 Water Quality approval process. According to AUSS amendment, Section 22 has two Planned Area Developments ("PAD"), Castlegate and Summer Ridge.

Castlegate is located in the northern half of the section and is to consist of approximately 276 acres. The subdivision is to consist of 1,409 medium to high density residential dwelling units, some commercial sites, and a 12-acre elementary school site. The elementary school site is to be developed in 10 phases.

Summer Ridge is a proposed subdivision of approximately 100 acres that is to developed in 350 single family homes.

Section 22 also includes a gravel mine of approximately 237 acres. The mine is regulated by ADEQ and Pinal County for runoff associated with the chemicals used.

### **Summary**

As discussed above, ADEQ has issued AUSS NOV's for its operation of wastewater treatment plants in violation of applicable codes. AUSS has failed to transfer ownership and has failed to monitor and report the performance of its treatment plants as required by the terms of the APP.

Staff believes that AUSS has failed to meet its obligations as a public service company authorized in Commission Decision No. 64288. AUSS has failed to transfer assets, operate assets, report and comply with ADEQ and the Commission.

Staff recommends the Commission require AUSS to show cause (i.e. produce evidence) that it is a fit and proper entity and that it is in the public interest to retain the CC&N issued in Decision No. 64288.

### **Recommendations**

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.

Staff recommends that the Commission cancel AUSS's CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to Show Cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

## MEMORANDUM

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: September 18, 2003

RE: **ARIZONA UTILITY SUPPLY & SERVICES, LLC (DOCKET NO. SW-04002A-02-0837)**  
**JOHNSON UTILITIES (DOCKET NO. WS-02987A-02-0837)**

Arizona Utility has filed an application to transfer part of its CC#N to Johnson Utilities. Attached is an amended legal description for the area that is to be transferred. This amended description has been docketed by the company and should be used in place of the original description submitted with the application.

Also attached is a copy of the map for your files.

:bsw

Attachments

cc: Docket Control  
Mr. Maurice Lee  
Deb Person (Hand-Carried)  
File

**COUNTY: Pinal**

**Sewer**

WS-2987 (6)  
Johnson Utilities Company

**Sewer**

SW-4002 (1)  
Arizona Utility Supply & Services, LLC

**Sewer**

Arizona Utility Supply & Services  
Docket No. SW-4002-02-837  
Application to Transfer to Johnson Utilities  
Docket No. WS-2987-02-837

**RANGE 8 East**

**TOWNSHIP 2 South**

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
27	28	29	30	31	32
37	38	39	40	41	42

T. List names and addresses of any other public utility interest Transferee has:

1. To be furnished by Transferee by 12/1/02
2. \_\_\_\_\_

U. Indicate the date that notice of the application was sent, or will be sent to the customers.

December 1, 2003

Note:

This application is necessary as Arizona Utility Supply & Services, LLC has been unable to acquire the 208 Amendment by Central Arizona Association of Governments (CAAG)

**AREA TO BE TRANSFERED**

**LEGAL DESCRIPTION**

**ALL OF SECTION 22 TOWNSHIP 2 SOUTH, RANGE  
8 EAST OF THE GILA AND SALT RIVER BASE and  
MERIDIAN, PINAL COUNTY, ARIZONA.**