

ORIGINAL

PINAL COUNTY
BOARD OF SUPERVISORS



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LIONEL D. RUIZ, District 1
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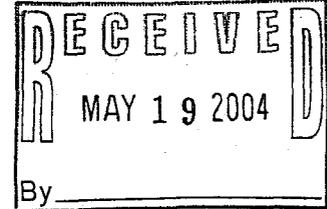
JIMMIE B. KERR, District 3
Casa Grande

AZ CORP COMMISSION
DOCUMENT CONTROL



STANLEY D. GRIFFIS, Ph.D.
County Manager

06



May 17, 2004

Mr. William A. Mundell, Commissioner
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2927

H₂O, Inc. for an Extension of its CC&N; Docket No. W-02234A-00-0371
Johnson Utilities for an Extension of its CC&N; Docket No. WS-02987A-99-0583
Johnson Utilities for an Extension of its CC&N; Docket No. WS-02987A-00-0618
Diversified Water Utilities to Extend its CC&N; Docket No. W-02859A-00-0774
Queen Creek Water Co. to Extend its CC&N; Docket W-01395A-00-0784
Decision No. 64062 (Amends Decision No. 63960), October 4, 2001

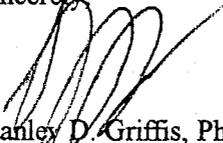
Dear Mr. Mundell,

As you requested, a copy of the Diversified Water Utilities, Inc. v. Pinal County, et al. settlement is attached. Contrary to what the Tribune newspaper article purports, the facts of this matter are:

1. The Board of Supervisors did not initiate the special district in order to "persecute" Mr. Gray or his company. The fact is that 100% of the landowners in the district petitioned the Board to create the district since they would rather have a business relationship with Johnson Utilities. The Board acted in its legal capacity and in the best interest of the citizens who would be served by the district. Unfortunately, we missed a step in the legal process for forming such a district.
2. The settlement agreement does not require the "county officials to recommend that the Arizona Corporation Commission award the former Skyline area to Diversified." Specifically, the agreement (page 3 & 4) requires the Board of Supervisors to "support the reconsideration and amendment of Arizona Corporation Commission Decision Docket No. 65840" and (page 4) ...the Pinal County Board of Supervisors ...will recommend and request that Pinal staff file letters and testimony in support thereof and withdrawing testimony previously submitted..." Please accept this letter as official notification that I am, on behalf of the Board, asking that you withdraw testimony previously submitted on behalf of the Board supporting Johnson Utilities, L.L.C.'s request to secure a certificate to provide water service thereto.
3. We have acknowledged that the formation of the district missed one important legal step.

If you wish any further information on this topic, I would be happy to talk with you via telephone or in person. Barring any unforeseen occurrences and if neither you nor the other commissioners have any further requests, this matter will be considered closed. The question as to whom you will award the right to service this area is a question that we hope the Commission will answer by awarding the CC & N to the company that you feel will provide the best service to our County residents living in the area in question. That has been the single goal of the Pinal County Board of Supervisors and we hope you will have that as the goal of the Arizona Corporation Commission.

Sincerely,


Stanley D. Griffis, Ph.D.
Pinal County Manager

Arizona Corporation Commission
DOCKETED

MAY 20 2004

DOCKETED BY 

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this 27th day of April 2004, by and between PINAL COUNTY, a political subdivision of the State of Arizona ("Pinal County"); SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT, a purported domestic water improvement district ("Skyline"); and BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA (the "Board"); JIMMIE B. KERR, SANDIE SMITH, and LIONEL D. RUIZ, in their capacities as members of and constituting the BOARD OF SUPERVISORS OF PINAL COUNTY, elected officials of Pinal County, Arizona (the foregoing collectively referred to as the "the County Defendants"), and DIVERSIFIED WATER UTILITIES, INC., an Arizona corporation ("Diversified").

II. RECITALS

A. Disputes have arisen between the parties concerning the formation of the Skyline Domestic Water Improvement District ("Skyline") that are the subject of various claims and a lawsuit entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, pending in Maricopa County Superior Court as Cause No. CV2002-003724.

B. Diversified also filed a separate Notice of Claim dated August 4, 2003 asserting various claims against County Defendants.

C. The parties to this Agreement desire to settle the Maricopa County Superior Court action and the Notice of Claim.

II. TERMS AND CONDITIONS

The parties hereby agree that the Maricopa County Superior Court action entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, CV2002-003724 and the Notice

of Claim dated August 4, 2003 shall be finally settled, dismissed and compromised on the following terms:

1. The Board shall adopt a resolution in the form attached hereto as Exhibit 1 and incorporated herein by this reference that reflects all of the following:

- a. Finding, concluding and resolving that, under the authority set forth in A.R.S. §11-251(14) to prosecute, defend and compromise actions to which the County is a party, the resolution is adopted as part of, and as consideration for, the settlement of the Maricopa Superior Court action brought by Diversified Water Utilities, Inc. as Case No. CV2002-003724 (consolidated with Case No. CV2003-006223) and is supported by the entire record in the consolidated case and the record developed before the Board of Supervisors in response to two distinct efforts to form a domestic water improvement district to be called the Skyline Domestic Water Improvement District;
- b. Finding, concluding and resolving that Resolution No. 031401-SDWID, Skyline and all actions taken on behalf of or in furtherance of Skyline were and are void *ab initio* and of no force or effect and repealing Resolution No. 031401-SDWID;
- c. In the exercise of its discretion pursuant to A.R.S. §48-906(B), finding that the territory set forth in the petitions relating to the request to form Skyline and that led to the adoption of Resolution No 031401-SDWID should not have been incorporated into an improvement district and all further proceedings on the petitions are hereby dismissed;

- d. Finding, concluding and resolving that at the present time:
- i. The public convenience, necessity or welfare is not promoted by duplication of water providers and water systems in the area described in Exhibit A (attached hereto and incorporated by reference), plus any natural fill area east of the railroad tracks and the area described in Exhibit A;
 - ii. Diversified has been issued a certificate of convenience and necessity to provide domestic water service to much of the area described in Exhibit A;
 - iii. Over the past four years through participation in proceedings before the Arizona Corporation Commission, public hearings before this Board and Maricopa Superior Court Case Nos. CV2002-003724 and CV2003-006223, the County Defendants have become familiar with Diversified, its operations and recognize Diversified's ability to provide reliable water service to its customers and that Diversified is ready, willing and able to provide reliable domestic water service to the area described in Exhibit A, plus any natural fill area east of the railroad tracks and the area described in Exhibit A, in accordance with the rules, regulations and laws that govern its operations;
 - iv. Pinal County and the Board of Supervisors, therefore, support the reconsideration and amendment of Arizona Corporation Commission Decision No. 65840 (Docket Nos. W-02234A-00-

0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-00-0774 and W-0395A-00-0784), as amended and supplemented) or such other application Diversified may file during calendar year 2004 so that Diversified's Certificate of Convenience and Necessity is expanded to include the territory described in Exhibit B (attached hereto and incorporated by reference) (i.e., most of the area ACC Staff's and ACC Hearing Division recommended be granted to Diversified, but limited to the area generally falling east of the railroad tracks and west of the CAP canal) and further will recommend and request that Pinal County Staff file letters and testimony in support thereof and withdrawing testimony previously submitted on behalf of the Board supporting Johnson Utilities, L.L.C.'s request to secure a certificate to provide water service thereto, as may be reasonably requested by Diversified; and

- e. Finding, concluding and resolving that in furtherance of exercising its authority to determine whether the public convenience, necessity or welfare will be served by the formation of a domestic water improvement district pursuant to A.R.S. §48-905 and 48-906, petitioners seeking to form or extend a domestic water improvement district over or into any area where an existing entity is authorized by law to provide domestic water service to the public within five (5) miles of the territory to be included within the domestic water improvement district shall be required, no less than ten (10) days prior

to the hearing required by A.R.S. §48-905(A) or, if hearing is waived pursuant to A.R.S. §48-905(C), no less than ten (10) days prior to action by the Board, to secure and submit to the Board and all existing providers authorized to provide water service to the public within five miles of the proposed district or extension all of the following:

- i. A non-binding determination as to whether the public convenience, necessity or welfare will be promoted by the formation or extension of the domestic water improvement district, prepared by an independent third party or entity (i) experienced in evaluating the water needs of similar areas, (ii) not affiliated with or having performed services within the past five years for the petitioners or any water provider rendering water service within ten miles of the area where the domestic water improvement district is sought to be formed or extended and (iii) if the petition involves any portion of the area described in Exhibit A, acceptable to Diversified, provided Diversified, if requested by the petitioners or Pinal County, provides not less than four names of persons or entities that it deems acceptable to perform the determination. The party performing the determination shall be asked to evaluate, without limitation, the following: whether and to the extent existing water service providers are unwilling or unable to render adequate water service to the area sought to be served by the domestic water improvement district; whether and to the extent the domestic water

improvement district's facilities will duplicate existing facilities, whether and to the extent an existing water provider or the public it serves in Pinal County will be adversely affected if the District is created or extended;

- ii. An elementary business plan, such as or similar to the Elementary Business Plan defined in Arizona Administrative Code R18-4-602, including evidence of the domestic water improvement district's ability and plan to timely pay compensation to the existing certificated provider; and
 - iii. Assurance that a determination will be secured no later one year from formation or expansion of the domestic water improvement district from the Arizona Department of Environmental Quality that the proposed domestic water improvement district will or will not meet the technical, managerial and financial capacity requirements specified in Arizona Administrative Code R18-4-603, R18-4-604 and R18-4-605, as amended from time to time.
- f. Finding, concluding and resolving that it is in the public interest, and in furtherance of the settlement of the action by Diversified, for the County Defendants and Diversified to enter into a tolling agreement to waive for either two years from the date of adoption of the Resolution described herein or the issuance of a non-appealable order from the Arizona Corporation Commission granting or denying Diversified's request to extend its certificated area to encompass the area described

in Exhibit B, whichever occurs first, any applicable statute of limitations, estoppel or waiver defenses that may arise subsequent to December 16, 2003 to any claim that has otherwise been preserved by the action entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, Maricopa County Cause No. CV2002-003724 or to any claim that has otherwise been preserved by Diversified's Notice of Claim.

For a period of two years the County Defendants agree not to assert as a bar to an action by Diversified the expiration of any statute of limitations or any claim of waiver or estoppel. The parties do not, by this Agreement, admit or deny the applicability of any particular statute of limitations, or the applicability of any particular period of limitation, nor do the parties hereby waive any defenses that they may assert in the superior court action or Notice of Claim.

2. The Board shall not oppose, directly or indirectly, Diversified's efforts to amend Diversified's Certificate of Convenience and Necessity to provide water service to the entirety of the area described in Exhibit A, plus any natural fill area east of the railroad tracks and the area described in Exhibit A with regard to any application filed with the Arizona Corporation Commission prior to December 31, 2004.

3. The Board, upon petition from Diversified in proper form, will grant Diversified a non-exclusive 25-year County franchise permitting the use of County roads, easements and rights-of-way within the area described in Exhibit A plus any natural fill area east of the railroad tracks and the area described in

Exhibit A in the form reflected in existing Pinal County franchises granted to a regulated water utility within the last twelve months and attached hereto as Exhibit 2 and incorporated herein by reference.

4. The parties shall enter into and file the form of Stipulated Judgment, attached hereto as Exhibit 3 and incorporated herein by this reference, dismissing the court action as moot. The parties further agree that the dismissal will be deemed with prejudice if, within two years of the date the resolution adopted pursuant to this Settlement Agreement, the dismissal is not set aside or a separate action instituted by Diversified. Diversified agrees it shall not seek to set aside the dismissal or file a new action asserting the claims set forth in the current court action unless one or more of the following occur within the next two years: a) the County Defendants breach this Settlement Agreement, b) the resolution required by this Settlement Agreement is either repealed or substantively amended without Diversified's prior consent or c) an action is filed which successfully challenges the validity or enforceability of the resolution adopted by the Board pursuant to this Settlement Agreement (provided that in the event such an action is timely filed, Diversified has the later of two years from the date of this Agreement or 60 days after the entry of a non-appealable judgment or decision successfully challenging the Resolution required by Paragraph 1 of this Agreement to take action, if any). The County Defendants shall notify Diversified within ten business days of learning of the occurrence of any of the foregoing actions.

5. Diversified shall withdraw with prejudice its August 4, 2003 Notice of Claim upon the ACC rendering a non-appealable decision on Diversified's request to expand its certificated area to include Exhibit B.

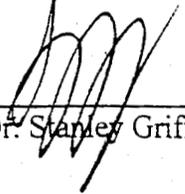
6. All parties bear their own costs and legal fees incurred in the litigation and implementing the Settlement.

7. Performance of item 4 is contingent on the Board first completing item 1; and performance of items 5 and 6 are contingent upon entry of a final non-appealable order from the Arizona Corporation Commission granting or denying Diversified's request to extend its certificated area to encompass the area described in Exhibit B.

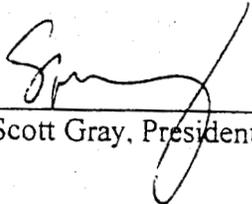
8. In the event of a breach of this Agreement by any party, the non-breaching party or parties shall have the right to all rights and remedies available at law and equity. In the event any action is instituted to enforce this Agreement or arising from a breach of this Agreement, the successful party in such action shall be entitled to recover its reasonable litigation costs incurred, including, without limitation attorneys fees, court costs, witness fees, costs of experts and studies.

County Defendants,
Pinal County
Pinal County Board of Supervisors
Skyline Domestic Water Improvement
District
Jimme B. Kerr
Sandie Smith
Lionel D. Ruiz

Plaintiff,
Diversified Water Utilities, Inc.



By: Dr. Stanley Griffis, County Manager



By: Scott Gray, President

Attest:

Spencer Cluff
Deputy Clerk

Approved as to Form:

William McLean
William McLean, Chief Civil Deputy
County Attorney

Approved as to Form:

William Sullivan
William Sullivan, Attorney for
Diversified Water Utilities, Inc.

EXHIBIT A

Part 1: Existing Diversified Certificated Area:

In T2S, R8E:

Sections: 27, N ½ 34, 35

In T3S, R8E:

Sections 2, S ½ 3, 4, 9, 10, 11, 12

Part 2: Extension of Diversified Certificated Area:

In T3S, R8E:

Sections 13, 14, 15, portion of 16 East of Railroad Tracks,
23

EXHIBIT B

Extension of Diversified Certificated Area:

In T3S, R8E:

Sections 13, 14, 15, portion of 16 East of Railroad Tracks,
23