

ORIGINAL



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BEFORE THE ARIZONA CORPORATION CO.

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

Arizona Corporation Commission

DOCKETED

JUL 23 2004

DOCKETED BY: [Signature]

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AZ CORP COMMISS  
DOCUMENT CONT

IN THE MATTER OF THE APPLICATIONS )  
OF H2O, INC. AND JOHNSON UTILITIES )  
COMPANY FOR AN EXTENSION OF )  
THEIR CERTIFICATES OF CONVENIENCE )  
AND NECESSITY. )

DOCKET NOS. W-02987A-00-0371  
WS-02987A-00-0583

IN THE MATTER OF THE APPLICATION )  
OF JOHNSON UTILITIES, L.L.C., DBA )  
JOHNSON UTILITIES COMPANY, FOR AN )  
EXTENSION OF ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO )  
PROVIDE WATER AND WASTEWATER )  
SERVICE TO THE PUBLIC IN THE )  
DESCRIBED AREA IN PINAL COUNTY, )  
ARIZONA. )

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION )  
OF DIVERSIFIED WATER UTILITIES, INC. )  
TO EXTEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY. )

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION )  
OF QUEEN CREEK WATER COMPANY TO )  
EXTEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY. )

DOCKET NO. W-01395A-00-0784

**DIVERSIFIED WATER UTILITIES, INC.'S  
SUPPLEMENT TO STAFF'S MAY 17, 2004 REPORT ON JOHNSON  
UTILITIES, L.L.C. dba JOHNSON UTILITIES COMPANY PURSUANT TO  
DECISION NO. 65840**

Diversified Water Utilities, Inc. ("Diversified"), provides this supplement to the May 17, 2004 Report filed by the Utilities Division Staff on Johnson Utilities, L.L.C., dba Johnson Utilities Company ("JUC"). The purpose of this Supplement is to supply information not discussed by Staff and which Diversified believes are important to

1 the regulatory authority of the Commission and, if considered, will warrant issuance of an  
2 Order to Show Cause against JUC.

3 I. AN ORDER TO SHOW CAUSE IS APPROPRIATE TO  
4 EXAMINE THE LEGALITY OF JUC EXPANDING ITS  
5 SERVICE TERRITORY BY AGREEMENT WITHOUT  
6 SECURING NECESSARY COMMISSION APPROVALS

7 JUC has been utilizing county improvement districts to expand its service  
8 territory while avoiding securing a certificate of convenience and necessity or  
9 Commission authorization of its rates and charges. JUC first requests the landowners to  
10 petition the County Board of Supervisors to form a district. JUL will testify in favor of  
11 the district and publicly commit to provide utility service to the area in question. Once the  
12 district is formed, a long-term (e.g., 30 years) "management agreement" between the  
13 district and JUC is executed, whereby JUC agrees to construct, own and operate the water  
14 delivery system for the district and provide water service to the district. See, Water  
15 Service and Management Agreement dated July 11, 2001 and attached hereto as Exhibit  
16 A. The district is a sham to enable JUC to expand its service area without first securing  
17 the requisite Commission approvals.

18 Diversified respectfully suggests that a public service corporation's  
19 agreement to construct a plant and provide utility service without first securing a  
20 certificate and Commission approval of its rates and charges to be imposed by JUC  
21 violates A.R.S. §§ 40-281 *et seq.* (requiring certificates as a requisite to a public service  
22 corporation constructing plant) and A.R.S. § 40-251 (requiring Commission approval of a  
23 utilities rates and charges after hearing). Staff did not examine these violations.  
24 Diversified believes the violations warrant issuance of an Order to Show Cause by the  
25 Commission and, after hearing, entry of an order precluding JUC from performing under  
the existing agreements and from executing any future agreements of this nature.

JUC first utilized this technique in the above-captioned matter to avoid the  
Commission Staff's recommendation that Diversified's certificate be extended over an

1 area JUC desired to serve. The Skyline Domestic Water Improvement District was  
2 formed just twenty-four hours before commencement of the Commission's certification  
3 hearing. A few months later, the Pinal County Board of Supervisors approved a 30-year  
4 management agreement between the district and JUC. See Exhibit A, attached hereto.<sup>1</sup>  
5 Diversified is informed and therefore believes that JUC has used this same procedure on  
6 one or more additional occasions.

7 II. AN ORDER TO SHOW CAUSE IS APPROPRIATE TO  
8 EXAMINE WHETHER JUC IMPROPERLY INTERFERED  
9 WITH DIVERSIFIED'S EFFORTS TO SECURE A NEW  
10 WELL

11 Diversified filed an eminent domain action in 2002 to secure a much  
12 needed well and well site to serve its growing customer base. The well is located in  
13 Diversified's certificated area and satisfies both Diversified's growing demand and  
14 provides the operational redundancy otherwise lacking in Diversified's one well system.  
15 In 2000, Diversified had previously reached an understanding on the purchase of this well  
16 with its owners. However, JUC then interfered with the transaction and the owners  
17 refused to negotiate further with Diversified. This action, together with others, resulted  
18 in Diversified requesting and receiving a Temporary Order from the Commission's  
19 Hearing Division enjoining JUC from extending its facilities or service into the area  
20 encompassed by Diversified's certificate. See, Exhibit C attached hereto.<sup>2</sup> Subsequently,  
21 JUC made an appearance in the condemnation action in opposition to the acquisition  
22 based upon false claims delaying Diversified's condemnation proceeding. JUC claimed  
23 to have a pre-existing contract to purchase the well and argued that the well would be

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24 1 On March 31 and May 5, 2004, the Pinal County Board of Supervisors, after three years of  
25 litigation, declared the Resolution, the District and actions taken in furtherance thereof, void *ab*  
*initio* and of no force and effect. See, Exhibit B attached hereto.

2 The Hearing Division stayed further action on the Complaint first until the certification  
proceeding was completed and later due to the litigation challenging the Skyline Domestic  
Water Improvement District. Diversified respectfully suggests that the well issue is better  
considered with the other issues raised herein.

1 used "as the primary water source for the Skyline Domestic Water Improvement  
2 District." The well was located in Diversified's exclusive certificated territory and not  
3 within the boundaries of the District. JUC's efforts were without merit and Pinal County,  
4 acting as the Skyline Domestic Water Improvement District, took over opposition to  
5 Diversified acquisition of the well. <sup>3</sup> This action violates both A.R.S. §40-281(A)  
6 (prohibiting construction of plant without a certificate), and A.R.S. §40-  
7 281(B)(prohibiting interference with another public service corporation's existing  
8 system).

9 III. AN ORDER TO SHOW CAUSE IS APPROPRIATE TO  
10 EXAMINE WHETHER THE PAYMENT OF JUC'S FINES  
11 BY DEVELOPERS WAS IN THE PUBLIC INTEREST.

12 During the open meeting deliberations leading to the adoption of Decision  
13 No. 65840, it was disclosed that developers served by JUC paid the Eighty Thousand  
14 Dollars (\$80,000) in fines imposed on JUC by the Arizona Department of Environmental  
15 Quality. At the time this penalty was imposed, it was the highest penalty assessed by  
16 ADEQ for water quality violations.

17 The purpose of imposing a financial penalty against a violator is to place a  
18 consequence against that violator for failure to adhere to the mandatory rules. Allowing  
19 JUC to transfer the penalty obligations to others significantly undermines the purpose and  
20 impact of the penalty. Moreover, to permit utilities offering monopoly services to cause  
21 its regulatory penalties to be paid by those receiving that service is improper and would  
22 be subject to enormous abuse and undue pressures. Common sense and the need to  
23 protect the public mandate a full investigation of the circumstances surrounding the  
24 payment of JUC's penalties by others and the rejection of any "voluntary" payments of

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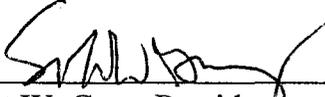
25 <sup>3</sup> Within days of Diversified being notified that Pinal County would be intervening and opposing  
Diversified, George Johnson, the president of JUC made a sizeable transfer of value to the  
family of the Pinal County Manager Stanley Griffis as evidenced by Exhibit D, attached  
hereto.

1 JUC's penalties by others. The only possible basis for such action is a breach of  
2 contractual obligations by a customer that lead to the violation resulting in the penalty.  
3 An order to show cause is appropriate to examine whether there was a legitimate basis for  
4 any third party payments of penalties made on behalf of JUC.

5 ACCORDINGLY, Diversified respectfully supplements the Staff Report  
6 dated May 17, 2004 and requests the Commission to issue its Order to Show Cause on  
7 the topics set forth above.

8 Respectfully submitted this 22nd day of July, 2004.

9 DIVERSIFIED WATER UTILITIES, INC.

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11   
12 \_\_\_\_\_  
13 Scott W. Gray, President  
14 2850 E. Camelback Rd., Ste. 200  
15 Phoenix, AZ 85016  
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PROOF OF SERVICE AND  
CERTIFICATE OF MAILING

I hereby certify that on this 23<sup>d</sup> day of July, 2004, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and twenty-one (21) copies of said document to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

With copies of the foregoing mailed and/or hand-delivered this 23<sup>d</sup> day of July, 2004 to:

Marc Stern, Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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Jorden & Bischoff  
7272 East Indian School Road, Suite 205  
Scottsdale, Arizona 85251  
Attorneys for Queen Creek Water

Christopher Kempley, Chief Counsel  
Teena Wolfe  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

H2O Inc.  
2125 E. 5<sup>th</sup> Street, Ste208  
Tempe, AZ 85251

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
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Phoenix, Arizona 85007

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Kathy Aleman, Manager  
Wolfcor, LLC & Wolfkin Farms  
Southwest Properties, Inc.  
3850 East Baseline Road, Suite 123  
Mesa, Arizona 85206  
Intervenor

Petra Schadeberg  
Pantano Development Limited Partnership  
3408 North 60<sup>th</sup> Street  
Phoenix, Arizona 85018-6702  
Intervenor

Dick Maes, Project Manager  
Vistoso Partners, LLC  
1121 West Warner Road Suite 109  
Tempe, Arizona 85284  
Intervenor

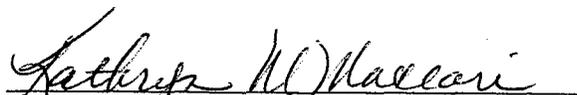
  
1629-3-1\pleadings\Supplement to Staff Report on JUL

EXHIBIT A

(4)

w/c

BOARD OF SUPERVISORS



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLER

DATE: 07/19/01 TIME: 1609  
FEE : 0.00  
PAGES: 4  
FEE NO: 2001-032677

WATER SERVICE, SUPPLY AND MANAGEMENT AGREEMENT

This Water Service, Supply and Management Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between Skyline Domestic Water Improvement District (hereinafter referred to as "SDWID"), an improvement district organized pursuant to A.R.S. §48-905(C), Shea Utility Services Company, Inc., (hereinafter referred to as "Shea Services"), and Johnson Utilities L.L.C., an Arizona public service company (hereinafter referred to as "Johnson Utilities").

WITNESSETH

WHEREAS, the Skyline Domestic Water Improvement District was organized pursuant to the laws of the State of Arizona as herinabove set forth, with boundaries established in Pinal County as more particularly set forth in Exhibit A;

WHEREAS, the Pinal County Board of Supervisors serves as the Board of Directors for "SDWID" and desires to secure a water supply to the District, as well as management of the water services once in place; and

WHEREAS, an agreement has been reached with "Johnson Utilities" to supply water to "SDWID" and with "Shea Utilities" to manage the water service within the district.

NOW, THEREFORE, it is hereby agreed as follows:

1. "Johnson Utilities" shall construct a water delivery system consisting of all water lines, meters, pumps, valves, connections, and storage facilities to supply "SDWID" water from "Johnson Utilities" water service system as approved by the Pinal County Engineer.
2. "Johnson Utilities" shall provide services through six-inch (6") or larger meter(s) consistent with requirements of Arizona Corporation Commission and/or the County Planning and Development Services Department, at "Johnson Utilities" tariffed rates for these services within their Certificated area.
3. "Johnson Utilities" shall provide Arizona Department of Environmental Quality (ADEQ) approved quantities and quality of water to "SDWID" at mutually agreed

upon location(s) within "Johnson Utilities" Certificate of Convenience and Necessity.

4. No construction costs shall be borne by "SDWID." However, "Shea Services" may recoup those costs by charging Hook-Up Fees to be collected from "SDWID" Developers or Customers. These fees shall not exceed "Johnson Utilities" tariffed rates for these services within their Certificated area.
5. The water delivery system including all components and facilities within "SDWID" shall be constructed within established easements or rights-of-way or upon property leased, purchased, or otherwise set aside for such use. These "Easements" shall provide "Shea Services" access to the "SDWID" system for purposes of repair and maintenance.
6. "Shea Services" shall manage and coordinate all aspects of performance by "Johnson Utilities" resulting from this agreement and once constructed, manage all daily operations in providing water service to "SDWID" which include the following:
  - 6.1 Provide the "ADEQ" certified operator for "SDWID."
  - 6.2 Conduct all water quality/system tests required by all applicable rules and regulations.
  - 6.3 File all applicable regulatory agency requirements, including but not limited to those for ADEQ, ADWR, ADOR, and Pinal County.
  - 6.4 Inspect, maintain, repair, and operate "SDWID's" distribution facilities.
  - 6.5 Negotiate and prepare all Hook-Up Fee Agreements (HUF's) and on-site Line Extension Agreements (LXA's) with developers as approved by "SDWID."
  - 6.6 Maintain all records and track all data for LXA refunds.
  - 6.7 Inspect, manage, and supervise all on-site construction by developers.
  - 6.8 Provide a customer service office within a ten (10) mile distance from "SDWID."
  - 6.9 Provide all customer service functions related to initiating, operating, and maintaining water services "SDWID" including: taking orders, receiving payments, responding to complaints, answering inquiries related to water services and/or billing; provide on-site meter hook-up, maintenance, water shut offs, turn ons, as well as any other service functions as deemed necessary by "SDWID."
  - 6.10 Recommend appropriate customer rates to the "SDWID" Board of Directors not to exceed "Johnson Utilities" tariffed rates.
  - 6.11 Install meters and collect/refund meter charges set by the Board of Directors not to exceed "Johnson Utilities" tariffed rates.
  - 6.12 Read meter, collect bills for water use pursuant to rates established by the "SDWID" Board of Directors not to exceed "Johnson Utilities" tariffed rates.

- 6.13 Pay all expenses and bills of "SDWID" as authorized by the "SWDID" Board of Directors.
7. "Shea Services" shall fund all operations of "SDWID" and retain those portions of fees collected on behalf of "SDWID" directly attributable to the operation and maintenance expenses. Fees collected which exceed the costs of operation of "SDWID" shall be divided equally between "SDWID" and "Shea Services."
  8. "Shea Services" shall be responsible for any and all shortfalls in operating expenses incurred by "SDWID" during the period of this Agreement.
  9. "Shea Services" shall pay all costs of acquisition of property and/or rights including any condemnation action initiated by "SDWID."
  10. All parties to this Agreement acknowledge that rates and charges are subject to change periodically upon application by "Shea Services" and approval by the "SDWID" Board of Directors at "Johnson Utilities" tariffed rates. "Johnson Utilities" shall provide water at the rates in effect for its potable supplies in areas within "Johnson Utilities" Certified area.
  11. "Shea Services" and "Johnson Utilities" agree that they shall indemnify, defend and hold harmless the County, its elected officials, officers, departments, employees, commissions and agents, from and against any and all suits, actions, legal proceedings, claims, demands, attorney fees, costs of litigation, or damages of any kind arising out of this Contract which are attributed to the alleged acts or omissions of "Shea Services" or "Johnson Utilities", their agents, employees, or anyone acting under either party's direction or on their behalf, whether intentional or negligent, in connection with or incident to this Agreement.
  12. "SDWID" shall have no employees as a result of this Agreement.
  13. "SDWID" shall not surrender ownership of its facilities to either "Johnson Utilities" or "Shea Services" as a result of this Agreement.
  14. This Agreement shall continue in full force and effect for thirty (30) years from the day and year first above written and may be extended or renewed at any time during its term upon the request and mutual agreement of the parties.
  15. This Agreement contains the entire agreement of the parties and may not be changed, modified or rescinded except in writing, signed by all parties hereto.
  16. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

PINAL COUNTY, a political  
subdivision of the State of Arizona,

X Jimmie B. Kerr  
Jimmie B. Kerr, Chairman  
Board of Supervisors

Johnson Utilities Company

BY: [Signature]  
George Johnson, President

ATTEST:

Stanley D. Griffis  
Stanley D. Griffis, Ph.D., Clerk  
Board of Supervisors

Shea Utility Services Company

BY: Barbara Hodges  
Barbara Hodges, Managing  
Member

Date: 7-11-01

CONSENTED to and APPROVED as to form this 11<sup>th</sup>

day of July, 2001.

ROBERT CARTER OLSON  
PINAL COUNTY ATTORNEY

[Signature]  
Rick V. Husk  
Deputy County Attorney

UNOFFICIAL

**EXHIBIT B**

RESOLUTION NO. 033104-DW4

A RESOLUTION OF THE BOARD OF SUPERVISORS OF PINAL COUNTY, ARIZONA SETTLING CERTAIN LITIGATION PENDING IN MARICOPA COUNTY SUPERIOR COURT ENTITLED *DIVERSIFIED WATER UTILITIES, INC. v. PINAL COUNTY et al.*; DECLARING VOID *AB INITIO* RESOLUTION NO. 031401-SDWID, THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND ALL ACTIONS TAKEN IN FURTHERANCE THEREOF; VOIDING AND/OR TERMINATING THAT CERTAIN AGREEMENT BETWEEN THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT AND SHEA UTILITY SERVICES COMPANY, INC. ("SHEA SERVICES") AND JOHNSON UTILITIES L.L.C., AN ARIZONA PUBLIC SERVICE COMPANY ("JOHNSON UTILITIES"), DATED JULY 11, 2001; DISMISSING THE PETITIONS TO FORM THE SKYLINE DOMESTIC WATER IMPROVEMENT DISTRICT; ADOPTING A POLICY GOVERNING CERTAIN PETITIONS TO FORM DOMESTIC WATER IMPROVEMENT DISTRICTS; FINDING DIVERSIFIED WATER UTILITIES, INC. TO BE A FIT AND PROPER WATER PROVIDER AND SUPPORTING DIVERSIFIED WATER UTILITIES, INC. IN ITS EFFORTS TO HAVE THE ARIZONA CORPORATION COMMISSION EXPAND ITS CERTIFICATED AREA IN PINAL COUNTY, ARIZONA.

WHEREAS, prior to February 28, 2001 petitions were submitted to the Board of Supervisors requesting the formation of the Skyline Domestic Water Improvement District pursuant to Arizona Revised Statutes Sections 48-901 *et seq.*;

WHEREAS, after notice a public hearing was conducted on the petitions and the matter was taken under advisement;

WHEREAS, on or about March 8, 2001 the Board of Supervisors were notified that petitions were being withdrawn and the withdrawal was accepted on March 9, 2001;

WHEREAS, between March 12 and March 13, 2001 new petitions were submitted requesting the Board of Supervisors form the Skyline Domestic Water Improvement District ("Skyline");

WHEREAS, on March 14, 2001 the Board of Supervisors summarily adopted Resolution No. 031401-SDWID purportedly creating Skyline, with the Board of Supervisors to act as the Board of Directors of Skyline;

WHEREAS, Diversified Water Utilities, Inc. ("Diversified"), a public service corporation certificated by the Arizona Corporation Commission ("ACC") to serve much of the territory encompassed by Skyline, filed an action challenging the creation of Skyline which action is pending in Maricopa Superior Court as Cause No. CV2002-003724 (consolidated with Case No. CV2003-006223) and entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*;

WHEREAS, Pinal County, the Board of Supervisors, Skyline and the individual members of the Board of Supervisors and the Board of Skyline are desirous of resolving and settling the aforementioned litigation and establishing a policy setting forth certain criteria that must be met to demonstrate that the public convenience, necessity or welfare will be promoted by the establishment or extension of a domestic water improvement district where a water provider authorized by law to serve the public already exists in the vicinity of the area sought to be included in a domestic water improvement district;

WHEREAS, the Board of Supervisors has authority, *inter alia*, to prosecute, defend and compromise actions to which the County is a party, pursuant to A.R.S. §11-251(14); to make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of businesses, pursuant to A.R.S. §11-251(21); to do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government, pursuant to A.R.S. §11-251(30); to make and enforce all local, police, sanitary and other regulations not in conflict with the general law, pursuant to A.R.S. §11-251(31); and, in the conduct of county business, to adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by section 11-251 or any other law or in conflict with any rule or law of this state, pursuant to A.R.S. §11-251.05;

NOW WHEREFORE, the Board of Supervisors, in furtherance of such settlement, based upon the entire record developed before the Board of Supervisors and in the litigation:

FINDS, CONCLUDES AND RESOLVES that in the action entitled *Diversified Water Utilities, Inc. v. Pinal County, et al.*, Maricopa County Cause No. CV2002-003724, Judge Kenneth Fields made a determination that the requirements of A.R.S. § 48-906(A) and -902(G) were not or may not have been met at the time Resolution No. 031401-SDWID was adopted on March 14, 2001 purporting to create the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that, at the time Resolution No. 03401-SDWID was adopted on March 14, 2001, the proposed Skyline Domestic Water Improvement District was composed of discontinuous areas located within six miles of the boundaries of the City of Mesa and the Town of Queen Creek and that neither municipality had consented to the formation of the Skyline Domestic Water Improvement District;

FURTHER FINDS, CONCLUDES AND RESOLVES that Resolution No. 031401-SDWID, Skyline and all actions taken on behalf of or in furtherance of Skyline, including, without limitation, any agreements entered into with Skyline or the Board on behalf of Skyline, were and are void *ab initio* and of no force or effect and that Resolution No. 031401-SDWID is repealed;

FURTHER FINDS, CONCLUDES AND RESOLVES, in the exercise of its discretion pursuant to A.R.S. §48-906(B), that the territory set forth in the petitions relating to the request to form the Skyline Domestic Water Improvement District 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;

FURTHER FINDS, CONCLUDES AND RESOLVES that at this time:

1. 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;
2. Diversified holds a certificate of convenience and necessity issued by the Arizona Corporation Commission (ACC) to provide domestic water service to much of the area described in Exhibit A;
3. 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;
4. 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-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's Staff 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 furthers recommends and requests that Pinal County Staff file letters and testimony in support thereof and withdraw the testimony previously submitted in that docket on behalf of Pinal County Board of

Supervisors in support of Johnson Utilities, L.L.C.'s request to obtain a certificate of convenience and necessity to provide domestic water service to the area, as may be reasonably requested by Diversified;

FURTHER FINDS, CONCLUDES AND RESOLVES, 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, 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 of Supervisors and existing water providers authorized to provide service within five (5) miles of the proposed domestic water improvement district or extension all of the following:

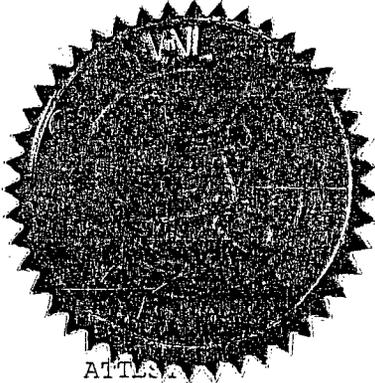
1. A non-binding determination as to whether the public convenience, necessity or welfare will be promoted by the formation or extension of the domestic water improvement district, prepared by an independent third party or entity (i) experienced in evaluating the water needs of similar areas, (ii) not affiliated with or having performed services within the past five years for the petitioners or any water provider rendering water service within ten (10) 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.
2. 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
3. Assurance that no later than one year from formation or extension of the domestic water improvement district that a determination will be secured from the Arizona Department of Environmental Quality (ADEQ) as to whether the domestic water improvement district meets 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.

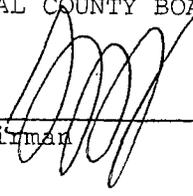
FURTHER FINDS, CONCLUDES AND RESOLVES that it is in the public interest and in furtherance of the settlement of the action and Notice of Claim filed by Diversified for the County to enter into a Settlement Agreement with Diversified in the form attached hereto as Exhibit C and a Tolling Agreement with Diversified in the form attached hereto as Exhibit D and authorizing execution of the Settlement Agreement and the Tolling Agreement.

FURTHER FINDS, CONCLUDES AND RESOLVES that this Resolution shall be effective immediately.

PASSED, APPROVED AND ADOPTED this 31<sup>st</sup> day of March, 2004, by the affirmative vote of a majority of a quorum of the Board of Supervisors.



PINAL COUNTY BOARD OF SUPERVISORS

  
Chairman

  
Clerk  
*Deputy*

EXHIBIT C

RECEIVED

2000 DEC -1 P 2:44

BEFORE THE ARIZONA CORPORATION COMMISSION COMMISSION DOCUMENT CONTROL

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

IN THE MATTER OF THE COMPLAINT )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. AGAINST JOHNSON UTILITIES )  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH THE )  
OPERATIONS OF AN EXISTING LINE, )  
PLANT OR SYSTEM. )

DOCKET NOS. W-02234-A-00-0775  
WS-02987A-00-0775  
W-02859A-00-0775

TEMPORARY  
ORDER

BY THE COMMISSION:

This matter having been presented to the Arizona Corporation Commission on Diversified Water Utilities, Inc.'s Application for an Order Without Notice To Preserve Status Quo, and the Arizona Corporation Commission having considered the allegations of the Application and the First Amended Complaint and Diversified Water Utilities, Inc.'s attorney having certified the efforts which have been made to give notice and the reasons supporting Diversified Water Utilities, Inc.'s claim that notice should not be required, and it appearing that immediate and irreparable injury, loss, and damage will result to Diversified Water Utilities, Inc., to wit the alienation of property owners within Diversified Water Utilities, Inc.'s certificated area, the loss of a well and wellsite, infringement upon Diversified Water Utilities, Inc.'s certificated area by another public service corporation and the risk of financing that is critical to Diversified Water Utilities, Inc. all of which are uncompensable after the fact, before notice is given to Johnson Utilities L.L.C. dba Johnson Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney and a hearing can be held on Diversified Water Utilities,

1 Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney can be  
2 heard in opposition, and good cause appearing therefore;

3 IT IS THEREFORE ORDERED that Johnson Utilities L.L.C. dba Johnson  
4 Utilities Company, its officers, directors, employees, agents, servants and any and all other  
5 persons in active concert or participation with them be and hereby are immediately restrained,  
6 from:

7 1. Interfering with Diversified Water Utilities, Inc.'s application for  
8 financing with the Water Infrastructure Financing Authority ("WIFA");

9 2. Extending its facilities or service into the area encompassed by  
10 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without  
11 limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described  
12 on Exhibit A, attached hereto and (ii) entering into a Service Agreement to provide, or otherwise  
13 providing water from the aforementioned wellsite to provide water service to properties within  
14 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

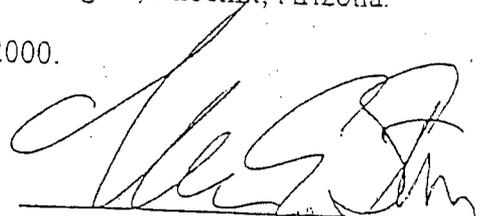
15 3. Contacting, speaking to, discussing and/or negotiating with  
16 landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated  
17 area for the purpose of offering water service and/or encouraging said landowners or prospective  
18 landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or  
19 otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service.

20 IT IS FURTHER ORDERED that, unless further extended by Order of the  
21 Commission this Order shall remain in force and effect pending a hearing whereby Johnson  
22 Utilities, L.L.C., dba Johnson Utilities Company shall appear and show cause why the Order  
23 Preserving the Status Quo should not remain in effect pending a final determination of  
24 Diversified Water Utilities, Inc.'s First Amended Complaint.  
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IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., dba Johnson Utilities Company shall appear and show cause why the Order Preserving the Status Quo should not remain in effect pending a final determination of Diversified Water Utilities, Inc.'s First Amended Complaint<sup>or</sup> the 6<sup>th</sup> day of December 2000 at the offices of the Arizona Corporation Commission at 1200 West Washington, Phoenix, Arizona.

Dated this 1<sup>st</sup> day of December, 2000.

  
ADMINISTRATIVE LAW JUDGE

6

EXHIBIT D



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

When recorded mail to:

GARY A DRUMMOND  
2525 E ARIZONA BILTMORE CR #117  
PHOENIX AZ 85016

DATE: 11/21/02      TIME: 1549  
FEE :            16.00  
PAGES:           5  
FEE NO: 2002-063827

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(The above space reserved for recording information)

CAPTION HEADING

SPECIAL WARRANTY DEED

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DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT. THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT CORNER IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY RECORDER'S OFFICE.

Form RE-49

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**WHEN RECORDED RETURN TO:**

Gary A. Drummond, Esq.  
Sallquist & Drummond, P.C.  
2525 E. Arizona Biltmore Circle, Suite 117  
Phoenix, Arizona 85016

201-1424905

**EXEMPT PURSUANT TO  
A.R.S. §42-1614A.7.**

**SPECIAL WARRANTY DEED**

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, GEORGE H. JOHNSON and JANA S. JOHNSON, Co-Trustees of The George H. Johnson Revocable Trust, dated July 9, 1987 ("Grantor"), do hereby convey to MICHELLE GRIFFIS, a single woman ("Grantee"), the following described real property (the "Property") situated in Pinal County, Arizona:

**SEE EXHIBIT A ATTACHED HERETO AND BY  
THIS REFERENCE MADE A PART HEREOF,**

together with all and all rights, benefits, easements and appurtenances thereto including, but not limited to, all appurtenant easements, licenses and rights-of-way, any property lying within the bed of any roads, streets or highways adjacent thereto, all hereditaments, reversionary rights, zoning, land use and other entitlements and development rights, rights in any strips and gores of land adjoining or surrounded by such real property, and all minerals, oil, gas, and other hydrocarbons located in or beneath such real property, and any other water rights and other rights or privileges appurtenant to such real property;

**SUBJECT TO all taxes and other assessments, reservation in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.**

**AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other.**

In accordance with Arizona Revised Statutes Section 33-404, the names and addresses of the beneficiaries of Grantor are disclosed on **EXHIBIT B** attached hereto and by this reference incorporated herein.



EXHIBIT "A"

Property

Lot 22, of JOHNSON RANCH UNIT 1, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Cabinet C, Slide 39.

EXCEPT THEREFROM, all coal, oil, gas and other mineral deposits as reserved in the Patent recorded in Book 54 of Deeds, Page 235 and in Docket 1421, Page 675.

Unofficial

**EXHIBIT B**

**Names and Addresses of Beneficiaries**

**George H. Johnson  
5230 E. Shea Boulevard  
Scottsdale, Arizona 85254**

**Jana S. Johnson  
5230 E. Shea Boulevard  
Scottsdale, Arizona 85254**

Unofficial