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The Law Offices of
**CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.**

2712 North Seventh Street
Phoenix, Arizona 85006-1090

Telephone (602) 393-1700
Facsimile (602) 393-1703
wsullivan@cgsuslaw.com

Michael A. Curtis
Susan D. Goodwin
Kelly Y. Schwab
Phyllis L.N. Smiley
David M. Lujan

William P. Sullivan
Larry K. Udall
Anja K. Wendel
K. Russell Romney
Ellen M. Van Riper

Of Counsel
Joseph F. Abate
Thomas A. Hine

REFER TO FILE NO. 1620-3-2-1

March 1, 2005

Hand Delivered

Jason D. Gellman, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

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2005 MAR - 1 P 4: 39
AZ CORP COMMISSION
DOCUMENT CONTROL

Re: Johnson Utilities Company/Docket No. WS-02987A-04-0869

Dear Mr. Gellman:

Our office represents Diversified Water Utilities in the above-referenced matter. We received the enclosed letter today from Diversified expressing serious concerns regarding the above referenced proceeding and asking that I share those concerns with Commission Staff. Diversified wanted to make sure that these concerns were of record prior to the finalization of the Staff Report in order to afford Staff ample opportunity to duly consider them in preparing the Staff Report.

I also wanted to alert you that I intend to make the following filings this week: a new Application to Amend Decision No. 63960; a Joinder in Staff's Motion to Consolidate and a Motion to Continue the Hearing and Extend the Time to Prepare the Staff Report. We are hopeful our Motion to Continue will be granted, so as to provide Staff and Diversified an adequate opportunity to prepare for hearing.

Arizona Corporation Commission
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MAR 01 2005

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Jason Gellman
February 9, 2005
Page 2 of 2

If you would like to discuss this letter, or any of the foregoing pleadings before they are filed, please do not hesitate to give me a call.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'William P. Sullivan', with a long horizontal flourish extending to the right.

William P. Sullivan
For the Firm

WPS/mw

Enclosure: Letter dated March 1, 2005
cc: 14 copies with Docket Control
Jay Shapiro, Esq. w/ enclosure

1620\3-2-1\letters\Jgellman030105



Diversified Water Utilities, Inc.

Corporate Office
(602) 840-9400 2850 E. Camelback Rd., Suite 20
fax (602) 840-6030 Phoenix, AZ 85016-4316

Customer Service Office
(480) 677-6080 3880 S. De Niza
fax (480) 677-6082 Apache Junction, AZ 85219-7355

March 1, 2005

Quality Water
Quality Service

Member, AWWA
AWPCA
WUAA
EVWF

William P. Sullivan
Curtis, Goodwin, Sullivan, Udall & Schwab
2712 North 7th Street
Phoenix, Arizona 85006-1090

Re: Application to Extend Water Service Area

Dear Bill:

I am very concerned that the Johnson Utilities CC&N Application for a portion of the Bella Vista Ranch Development that we are seeking to serve is being unduly accelerated in a manner that will not permit adequate investigation by either the Staff or us. I am also becoming increasingly concerned that Jim Fisher, the Staff person who is responsible for compiling the Staff Report, is not interested in investigating George Johnson or Johnson Utilities and will not present a fair and balanced evaluation of the two competing applications to extend water service. I have had previous difficulties with Mr. Fisher as reflected below.

There is a long line of incidences where George Johnson, or one of the entities owned or controlled by him, has been involved in highly questionable conduct. Johnson Utilities also has the history of concerns and regulatory violations. To my knowledge, the fine Johnson Utilities received from ADEQ for water quality violations is still the highest such fine handed down by ADEQ.

The Commission's files also contain allegations of unreasonable practices against Johnson Utilities made by those seeking service or providing competitive service and should not be ignored. I am attaching a recent example located in a Johnson certification matter. (Docket Nos. W-03576A-03-0586 and SW-03575A-03-0586). While I appreciate that an anonymous letter presents questions of reliability, the writer explains that he or she is afraid to sign the letter due to the prospect of reprisals if his or her identity is revealed. As you know and have seen, I have experienced first-hand the wrath of disagreeing with Mr. Johnson and his willingness to ignore the laws and facts to achieve his end.

As recently as February 14, 2005, the Attorney General, on behalf of the State of Arizona, ADEQ, Arizona Game and Fish and other State entities, filed a highly publicized superior court action against Johnson International, George Johnson and various others alleging against the Defendants a disregard for numerous laws and regulations, not to mention the intentional destruction of State property and wildlife. (Maricopa Superior Court Case No. CV2005-002692).

A major developer, Lennar Communities Development, has just filed a lawsuit alleging that Johnson Utilities failed to meet its deadlines or fulfill its promises for utility services to that developer. A copy of the February 19, 2005 East Valley Tribune article is attached.

These recent actions again raise serious issues regarding the character and fitness of Mr. Johnson and the way he and his companies conduct business in the State of Arizona. As such, these matters deserve close investigation by the Commission in a proceeding that must determine whether Diversified or Johnson is the better applicant and the fitness of each applicant. It is virtually impossible for Staff or Diversified to adequately investigate the issues raised in the complaints by the State and Lennar under the procedural schedule currently in place for the Johnson matter.

As further support for our concerns, there were numerous abusive actions on the part of Mr. Johnson and Johnson Utilities that led to Diversified obtaining a Temporary Order from the Commission restraining his and his company's undue and improper interference with the operations and certificated rights of Diversified. Despite the order, he continued to deal directly with others about Diversified's certificated area and was able to secure the support of Pinal County and other public service corporations to form the Skyline Domestic Water Improvement District, a county domestic water improvement district overlying much of Diversified's certificated area. A day before the ACC certification hearing began, and only two days after the first petition was filed, the Board of Supervisors approved the District. The existence of the defective District, one ultimately declared null and void by the Pinal County Board, was cited in Decision No 63960 as the only reason for leaving the area sought by Diversified uncertificated in 2001.

His success in the formation of the Skyline Domestic Water Improvement District encouraged Johnson to start using county domestic water improvement districts as a method of avoiding Commission regulation. A District would be created, but a Johnson entity would construct, own and operate the water utility under long-term contracts with the District. The attached pleading from the Commission's legal division demonstrates that Staff recognizes the highly questionable nature of this arrangement. Fortunately, Diversified's opposition and efforts against the Skyline District, together with efforts of Commissioner Mundell and others, has convinced the Pinal County Board to back away from supporting such shams.

I believe that the Commission Staff's primary concern should be ensuring that the public interest is served. In this case, however, I am concerned that this proceeding is becoming tainted with the all too familiar imprint of a Johnson demolition derby. For example, it is remarkable that the Johnson matter (filed after our Application) was able to secure a procedural order just 2 days after Staff filed the Sufficiency Letter. Is this possible without a member of Staff, such as Mr. Fisher, hand carrying the matter to the hearing division and requesting that an order be issued expeditiously? If so, what justified such a request? In contrast, our

competing application, which I believed would be treated as a request to amend Decision No. 63960, was frozen through the Insufficiency Letter process. I recognize that once Staff decided to treat the matter as a new application rather than as a request to amend, it took us the full 60 days to gather the information requested.

Importantly, my review of a recent Staff Report authored by Mr. Fisher in a Johnson certification proceeding makes no mention of the numerous problems with Mr. Johnson or Johnson Utilities. It was devoid of any mention of the record ADEQ fine or others paying that fine. The report makes no mention of past compliance issues of Johnson. There is no investigation of the activities discussed above or the imposition of steps that should be taken to prevent harm to the public from past problems. However, when another company sought to expand its certificate service area that competed with one of Mr. Johnson's improvement district's operations, the Palo Verde Utilities case (Docket No. SW-03575A-03-0586), Mr. Fisher expressed a number of concerns and recommended that a number of restrictions be placed against the competing company. Is a pattern developing?

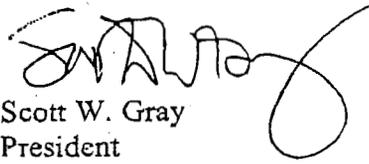
I recently attempted to give a community its water and wastewater system to operate on a non-profit basis. The proposal was suggested by Steve Olea and was supported by WIFA (through a WIFA grant) and ADEQ. A mailer was prepared by two opponents containing adverse statements attributable to Mr. Fisher. This mailer contributed to the community's failure to agree to take over the system. It is my understanding that the new stockholder has already filed for a significant rate increase, a consequence my efforts were intended to minimize.

Diversified has already established that it is the better water provider for the area. It is important that Diversified be treated fairly. I believe that before the Commission initiates a new time consuming and expensive certification proceeding, it should re-examine Decision 63960, as already amended, to reinstate what was referred to as Parcel 2 as proposed in the original Decision as be served by Diversified. This entire certification process has already been thoroughly analyzed by the Commission Staff and through hearing.

However, if necessary, it is important that a fair and balanced review be conducted of the pros and cons of which entity can best provide water service to the area if for some reason Decision 63960 is not amended to correct the Decision for Diversified. I do not believe this is possible under the procedural schedule currently in place. Please proceed with filing the appropriate application to amend Decision No. 63960. In addition, please support Staff's Motion to Consolidate Johnson's application with Diversified's application, together with obtaining a sufficient continuance to allow a full and fair investigation of the matter. In this regard, I have been informed by Centex Homes that it has cancelled its escrow because of real estate title issues. Under these circumstances, there is no compelling reason to rush this matter to hearing.

I would also ask that you make the Commission Staff aware of my concerns and authorize you to provide them a copy of this letter. Please contact me with any questions you might have.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. W. Gray", with a large, stylized flourish extending from the end of the signature.

Scott W. Gray
President

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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS
MARC SPITZER- Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission

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SEP 03 2003

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2003 SEP -3 P 2:39

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF)
PALO VERDE UTILITIES COMPANY FRO AN)
EXTENSION OF ITS EXISTING CERTIFICATE)
OF CONVENIENCE AND NECESSITY.)

DOCKET NO. SW-03575A-03-0586
W-03576A-03-0586

IN THE MATTER OF THE APPLICATION OF)
SANTA CRUZ WATER COMPANY, FOR AN)
EXTENSION OF ITS EXISTING CERTIFICATE)
OF CONVENIENCE AND NECESSITY.)

STAFF'S RESPONSE TO SONORAN
APPLICATION FOR LEAVE TO
INTERVENE.

The Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") hereby responds to the Application for Leave to Intervene ("Application") filed by Sonoran Utility Services, LLC ("Sonoran") on August 28, 2003 in the above captioned matter. Staff moves for denial of Sonoran's request, as it does not demonstrate that Sonoran has a direct and substantial interest in the above captioned proceeding. Such a showing is the minimum standard for approval of an application for leave to intervene pursuant to Arizona Administrative Code ("AAC") R14-3-105.

In the filed Application, Sonoran clarifies that it does not represent Pinal County, 387 Domestic Water Improvement District or 387 Wastewater Improvement District (collectively referred to as "the Districts"). The Application goes on to allege that Sonoran is merely the contracted manager for the Districts' operations. From this information it is difficult for Staff to envision how any action taken by the Commission in the above captioned case would affect Sonoran's management capabilities or the company's ability to contract in any direct or substantial manner.

The following issues raised by Sonoran's application are particularly disturbing to Staff. First, Sonoran asserts that certain parcels in involved in above captioned matter have signed petitions to be included within the Districts. This information seems irrelevant to the proceeding at hand, as the Commission has not been asked to preclude or interrupt such conduct. Furthermore, Sonoran fails to

1 indicate the owners or the actual parcels at issue in this statement.

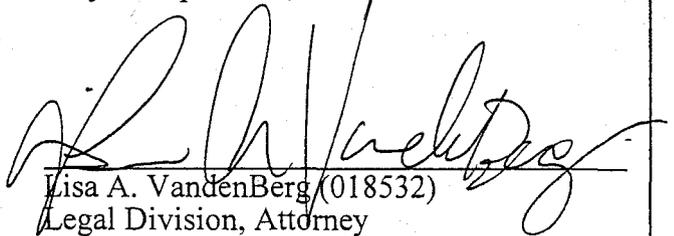
2 Second, Sonoran alleges that if those certain parcels are included in a Commission approved
3 extension of a Certificate of Convenience and Necessity ("CC&N"), such approval would be illegal.
4 However, despite making such a strong allegation as a basis for Intervention, Sonoran fails to
5 provide any support that such a legal preclusion upon the Commission exists. As well, Staff is not
6 aware of any support for such an allegation (especially considering there is no suggestion that the
7 Districts plan to pursue a condemnation action).

8 Furthermore if the Districts are concerned about such an alleged violation, it has not been
9 evidenced by a request to intervene in this proceeding. It seems that if the Districts are concerned
10 with the Commission's potential action in this matter they are the best suited to represent their
11 concerns and/ or interests.

12 Finally, Sonoran asserts that it is merely a managing agent of the Districts and as of yet a
13 review by Staff to analyze such assertion has not been necessitated. Staff does not believe that the
14 above captioned matter would necessitate such a review. However if the basis for Sonoran's
15 intervention is that a CC&N extension would take customers away from Sonoran, at some point
16 Sonoran's actions beg the question of whether they are in fact another public service company
17 attempting to use the Districts to circumvent regulation by the Commission. Such a review would
18 unduly broaden this matter.

19 Given that Staff wishes to prevent any unnecessary expansion of the matter or delay in
20 process, Staff moves for denial of Sonoran's Application for Leave to Intervene.

21 RESPECTFULLY SUBMITTED this 3rd day of September, 2003,

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Lisa A. Vandenberg (018532)
Legal Division, Attorney
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

27 AN ORIGINAL and fifteen (15)
28 copies were filed this 3rd day
of September, 2003 with:

1 Docket Control
1200 West Washington Street
2 Phoenix, Arizona 85007

3 COPIES of the foregoing document
was filed this 3rd day of September, 2003 to:

4 Jay L. Shapiro
5 Patrick Black
FENNEMORE CRAIG, P.C.
6 3003 North Central Avenue
Suite 2600
7 Phoenix, Arizona 85012
Attorneys for Palo Verde Utilities Company and
8 Santa Cruz Water Company

9 William McLean
Chief Civil Deputy
10 Pinal County Attorney's Office
P.O. Box 887
11 Florence, Arizona 85232

12 
13 Angela L. Bennett secretary to Lisa A. Vandenberg

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Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

2003 OCT 22 A 9:46

SW-03575A-03-0586
W-03576A-03-586

Gentlemen:

AZ CORP COMMISSION
DOCUMENT CONTROL

I am involved in real estate development. Over the course of the last year, I have been amazed to see Johnson Utilities conspire with Pinal County to avoid regulation of Johnson Utilities by the Corporation Commission. The County has set up several special districts that may comply with the facial requirements of state law but that cede unprecedented power and authority to a Johnson-owned entity called Sonoran Utilities. Sonoran is given complete operational control over the running of the district pursuant to a long-term, virtually unbreakable contract. Sonoran, not the special districts, is given ownership of all assets. Developers dealing with the special districts are required to dedicate land and improvements to Sonoran rather than to the district and, as a result, are required to pay gross-up taxes that would normally not be required for dedications to a publicly owned special district.

I strongly suggest that you investigate this matter thoroughly and pursue your constitutional authority to regulate private utility companies. The special districts formed by Pinal County are shams and have no legitimate purpose other than avoidance of regulation of Johnson Utilities by the Corporation Commission. If you cede your authority on this issue, you can expect these actions by Pinal County to proliferate and for other governmental entities that are overly friendly with developers to form additional districts in the future.

Because of my role in real estate development, I cannot provide my name without jeopardizing my livelihood. George Johnson is a vindictive person, and I cannot afford for him to know that I sent this letter.

Arizona Corporation Commission
DOCKETED

OCT 22 2003

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Developer sues Pinal board

County accused of helping Johnson in water district

By J. CRAIG ANDERSON
TRIBUNE

For the second time in four years, the Pinal County Board of Supervisors is accused of helping Scottsdale developer and utilities baron George Johnson get away with unlawful business practices in connection with a water improvement district.

A lawsuit filed Monday by developer Lennar Communities Development claims Johnson convinced executives to put his company in charge of water and sewer services for its planned community in Maricopa, and that Johnson has failed to meet deadlines or fulfill promises.

The lawsuit states that the Board of Supervisors — which also governs the water improvement district Johnson's company, Sonoran Utility Services, was hired to serve — ignored pleas to oust the utility or force Johnson to abide by his contract.

Lennar's accusations have much in common with those made by Queen Creek-area utility Diversified Water, which accused Pinal officials of illegally creating a water improvement district in 2001 and putting Johnson in charge of it.

Pinal officials settled the case in April, after which Chairwoman Sandle Smith, D-District 2 of Gold Canyon, vowed to keep the county out of the utilities business.

Smith said Friday that she was not aware of the lawsuit filed by Lennar.

"I haven't seen it, so I don't know anything about it," she said.

Neither Johnson nor Pinal County attorneys could be reached for comment late Friday.

Johnson is facing another lawsuit, also filed Monday, by Arizona Attorney General Terry Goddard on behalf of five state agencies, including the Department of Environmental Quality and the Game and Fish Commission. It claims one of his development companies bulldozed about 720 acres of state land north of Tucson, damaged protected historical sites and illegally destroyed desert plants and animals in connection with the ill-fated La Osa Ranch project.

Johnson International attorney Lee Stein has stated that Goddard's office "fundamentally misunderstands the facts" of that case, and that the company has been working with state officials to rectify the situation.

The Lennar lawsuit also claims Johnson assured landowners he had no real estate interests in the area but later sold the company's assets to area developer and convicted white-collar criminal Conley Wolfswinkel.

"Now we've been told by Mr. Johnson that he no longer has any interest in Sonoran and he has turned over the entire ownership and operation to a Wolfswinkel-controlled entity," states a letter from Lennar attorney Clare Abel to Pinal officials in March 2004. "We have no information about Mr. Wolfswinkel's experience in water and wastewater utility management."

Despite repeated requests to act in the interests of area landowners in the water district, known as "District 387," the lawsuit claims the "Board of Supervisors did nothing."

The complaint states Johnson failed to complete construction of the utilities infrastructure within the agreed time frame and also refused to help Lennar obtain needed approval from regulators.

"Defendants failed to provide information and approvals to Lennar and held them for 'ransom' so that Lennar would remove its objections to the district," it states.

Lennar is seeking unspecified damages for what it claims are significant losses as a result of Johnson's failure to perform and the county's refusal to hold the utility accountable.

"The plaintiff's interests have been damaged and are still threatened by the defendants' failure and refusal to comply with their contractual, fiduciary, statutory, and other obligations," the complaint states.