

ORIGINAL



0000018025

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAW OFFICES
CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.
2712 NORTH SEVENTH STREET
PHOENIX, ARIZONA 85006-1090
TELEPHONE (602) 393-1700
William P. Sullivan - 0105956
David M. Lujan - 017342
Attorneys for Diversified Water Utilities, Inc.

RECEIVED

2005 MAR -4 P 4: 28

AZ CORP COMMISSION
DOCUMENT CONTROL

19AD
Arizona Corporation Commission
DOCKETED
MAR - 4 2005

DOCKETED BY
KL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF H₂O, INC., FOR AN EXTENSION OF
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-0223~~7~~A-00-0371

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-99-0583

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

1
2 IN THE MATTER OF THE APPLICATION
3 OF QUEEN CREEK WATER COMPANY
4 TO EXTEND ITS CERTIFICATE OF
5 CONVENIENCE AND NECESSITY.

DOCKET NO. W-01395A-00-0784
**APPLICATION OF
DIVERSIFIED WATER
UTILITIES, INC. TO AMEND
DECISION NO. 63960, AS
AMENDED AND REQUEST FOR
EXPEDITED ACTION.**

8 *Diversified Water Utilities, Inc.* (“Diversified”), pursuant to A.R.S. § 40-252,
9 respectfully makes this application to amend Decision No. 63960, dated September 4, 2001
10 (as amended by Decision No. 64062, dated October 4, 2001 and Decision No. 65840, April
11 22, 2003) (the “Decision”) to adopt the original recommendation of the Administrative Law
12 Judge and Utilities Division Staff and expand Diversified’s Certificate of Convenience and
13 Necessity (“CC&N”) to include all of Sections 13, 14, 15, 23 and that portion of Section 16
14 east of the railroad tracks all being located in Township 3 South, Range 8 East, Pinal County,
15 Arizona (the “Expanded Area”). This Application is supported by the following:

17 1. Diversified is an Arizona corporation, in good standing as reflected by
18 the Certificate of Good Standing attached as **Exhibit A**. Diversified is authorized by the
19 Arizona Corporation Commission (the “Commission”) to provide domestic water service in
20 nine sections of Pinal County, Arizona and presently serves approximately 360 service
21 connections.
22

23 2. Diversified is a party to the Decision. Copies of Decision No. 63960,
24 plus Decision No.s 64062 and 65840 amending that Decision are attached hereto as **Exhibit**
25 **B**.

1 3. One of the issues addressed in the Decision was whether to extend the
2 Certificate of Convenience and Necessity ("CC&N") of Diversified or Johnson Utilities,
3 L.L.C. ("Johnson") to authorize the provision of water service to the Expanded Area. Both
4 the Commission's Utility Division Staff and Administrative Law Judge Marc Stern
5 recommended that Diversified be certificated to provide water service to the Expanded Area
6 and that Johnson be certificated to provide sewer service to the Expanded Area. Relevant
7 portions of the Staff Report and ALJ Recommended Order are attached hereto as **Exhibits C**
8 **and D**, respectively. The complete Staff Report and Recommended Order will be provided to
9 Staff or the Commission upon request.
10

11 4. The Expanded Area is part of the master planned development known as
12 Bella Vista Farms. Two of the sections of land included within the Bella Vista Farms
13 Development are already located within Diversified's Certificate of Convenience and
14 Necessity. The Expanded Area encompasses that portion of the Bella Vista Farms
15 Development that is presently contiguous to, but outside Diversified's existing CC&N.
16

17 5. Diversified is a fit and proper entity to provide domestic water service to
18 the Expanded Area, as previously recognized by Staff and Administrative Law Judge Stern.
19 *See, Exhibits C and D.*
20

21 6. As previously demonstrated, there is a need for service in the Expanded
22 Area.
23

24 7. Expanding Diversified's certificated area to include the Expanded Area
25 will enhance Diversified's ability to continue to provide reliable water service to both its
existing and future customers.

1 8. The public interest will be served by extending Diversified's CC&N to
2 encompass the Expanded Area.

3 9. The Commission initially declined to issue any certificate to Diversified
4 or Johnson at that time stating in Decision No. 63960: "With respect to Parcel 2, because of
5 uncertainty with respect to the Skyline District and potential litigation in state court, we shall
6 deny all applications for this parcel at this time." *Id.* at p.32.

7 10. Diversified was the party that had filed the court action (*Diversified*
8 *Water Utilities, Inc. v. Pinal County, et al.*) challenging the formation of the Skyline
9 Domestic Water Improvement District (the "District") and requesting the District and all
10 actions taken in furtherance thereof be declared null and void *ab initio*. *See*, Maricopa
11 Superior Court Case No. CV2002-003724. (The case was originally filed in Pinal County
12 Superior Court, but was later transferred, by stipulation, to Maricopa County after the County
13 first tried to have the action removed to Federal District Court).

14 11. The Pinal County Board of Supervisors (the "Board"), in furtherance of
15 a Settlement Agreement with Diversified, adopted Resolution Number 033104-DWU (a copy
16 of which is attached hereto as **Exhibit E**) rescinding the resolution that formed Skyline and
17 declaring all actions taken on behalf of or in furtherance of Skyline to be void *ab initio*.
18 Skyline therefore, has been dissolved and no longer exists.

19 12. In addition, having now become very familiar with Diversified and its
20 operations through 3 years of litigation, the Board was willing to and did expressly recognize
21 that 1) Diversified was providing reliable water service to Diversified's existing customers
22 and 2) Diversified was ready, willing and able to provide reliable domestic water service to
23
24
25

1 the Expanded Area. See, **Exhibit E**. By Resolution No. 033104-DWU, the Board
2 affirmatively finds, concludes and resolves that it supports the expansion of Diversified's
3 CC&N to include the Expanded Area and requested its Staff file letters and testimony in
4 support thereof and to withdraw the testimony previously submitted supporting Johnson
5 Utilities, L.L.C. See, **Exhibit E**.
6

7 13. Now that the reason for deferring the extending of Diversified's CC&N
8 to encompass the Expanded Area has been eliminated, Diversified respectfully requests the
9 Commission enter its Order amending Decision No. 63960 consistent with the
10 recommendation of its Staff, its Hearing Division and the evidence presented at hearing.
11

12 14. The Commission has already, on two separate occasions, amended,
13 directly or indirectly, Decision No. 63960 at the request of other parties to the proceedings.
14 See, **Exhibit B**. The first amendment granted Johnson's request to amend Decision No. 63960
15 to further expand Johnson's sewer certificate to include Parcel 2 (i.e., the Expanded Area) on
16 the basis that "the Skyline Water Improvement District does not impact wastewater service."
17 By accepting this argument and amending Decision No. 63960, the Commission necessarily
18 agreed that it was not finding fault with the underlying recommendations of Staff and the
19 Administrative Law Judge, but was only delaying a final resolution until the litigation
20 concerning the District was resolved. That litigation is now resolved and the District has
21 been declared by the Board of Supervisors to be void *ab initio*. This eliminates the reason for
22 the Commission delaying adopting the Staff's and ALJ's recommendations regarding Parcel
23
24

25 2.

1 15. Decision No. 65840 granted Johnson's *Second* Request for Retroactive
2 Extension of Time to comply with Decision No. 63690, as amended by Decision No. 64062
3 *See, Exhibit B.*

4 16. In addition to the Commission actions, Administrative Law Judge Stern,
5 by Procedural Order, extended the time for H₂O to comply with the requirements of Decision
6 No. 63960, as amended.

7 17. On November 24, 2004, Diversified filed an Application to extend its
8 CC&N to encompass the Expanded Area by either amending the Decision or as a new
9 application. Commission Staff elected to treat that application as a new application and
10 issued an insufficiency letter on December 7, 2004. Diversified responded with a
11 supplemental filing on February 3, 2005. *See, Docket No. W-02859A-04-0844.*

12 18. Following Diversified's submittal, Johnson filed a competing application
13 for a portion of the Expanded Area. Staff has found the Johnson application sufficient and
14 secured an April 18, 2005 hearing date on the matter. Diversified was granted intervention
15 in the Johnson matter by Procedural Order dated February 16, 2005. *See, Docket No. WS-*
16 *02987A-04-0869.*

17 19. Diversified is in the process of preparing data requests and requesting a
18 continuance of the hearing on the Johnson application. The need to have a Commission
19 decision on this application as a predicate to proceeding with the Johnson application is one
20 of the reasons the Johnson application should be continued.

21 20. There simply is no reason to start anew. The issue as to whether
22 Diversified or Johnson should serve this area was already the subject of extensive Staff
23
24
25

1 investigation and hearings. Staff and the Administrative Law Judge recommended
2 Diversified be awarded the Expanded Area. The existence of the District was the only reason
3 set forth in the Decision for not certificating the Expanded Area at that time. After three
4 years of litigation, the Board rescinded the improvidently issued resolution and declared the
5 District null and void. The Decision need only be amended to accept the recommendations of
6 Staff and the Administrative Law Judge. It is not in the public interest to duplicate the time
7 and costs that will be incurred through a repetitive contested proceeding.
8

9 21. To summarize, Amendment is appropriate because: (i) the proper water
10 service provider for the Expanded Area has already been addressed by ACC staff and an
11 extensive ACC Administrative Hearing both of which determined that Diversified is the
12 appropriate water provider; (ii) the underlying factor that resulted in leaving the Expanded
13 Area open and uncertificated (i.e., the state court action involving the validity of the District)
14 has been resolved and the District does not exist; (iii) the Pinal County Board of Supervisors
15 supports certification of the Expanded area to Diversified; (iv) the amendment to Decision
16 No. 63960 will avoid delay and expedite providing water services within the Expanded Area;
17 (v) the amendment to Decision No. 63960 will avoid the duplication of unnecessary costs and
18 expenses already incurred by Diversified for the CC&N Hearing and the expenses and costs
19 to defend against the interference in the affairs of Diversified spearheaded by Johnson
20 Utilities, L.L.C. and (vi) the amendment to Decision No. 63960 (as previously amended) will
21 bring to conclusion and remove the motivation for Johnson Utilities, L.L.C. to interfere with
22 and disrupt the operations of Diversified (i.e., to prevent the certification of the Expanded
23 Area to Diversified and secure the Expanded Area for Johnson Utilities, L.L.C.).
24
25

1 22. All correspondence and communications regarding this application
2 should be addressed to:

3 William P. Sullivan
4 Michael A. Curtis
5 David M. Lujan
6 wsullivan@cgsuslaw.com
7 mcurtis401@aol.com
8 dlujan@cgsuslaw.com

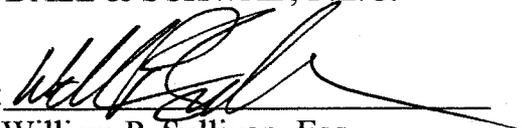
9 Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
10 2712 N. 7th Street
11 Phoenix, Arizona 85006
12 Phone (602) 393-1700
13 Facsimile (602) 393-1703

14 WHEREFORE, it is respectfully requested that the Commission:

- 15 1. After giving notice to any affected parties as may be required by law,
16 enter a decision amending Decision No. 63960, as amended, to grant Diversified Water
17 Utilities a certificate of convenience and necessity to serve the Expanded Area; and
18 2. Enter such further orders as the Commission deems just and appropriate
19 under the circumstances.

20 RESPECTFULLY SUBMITTED this 4th day of March, 2005.

21 CURTIS, GOODWIN, SULLIVAN,
22 UDALL & SCHWAB, P.L.C.

23 By: 

24 William P. Sullivan, Esq.
25 2712 North Seventh Street
 Phoenix, Arizona 85006-1090
 Attorneys for Diversified Water Utilities, Inc.

1 Jeffrey C. Zimmerman
2 Brad K. Keough
3 MOYES STOREY, LTD.
4 3003 N. Central, Suite 1250
5 Phoenix, AZ 85012
6 Attorneys for Arizona Utility Supply & Service, L.L.C.

7 Petra Schadeberg
8 PANTANO DEVELOPMENT LTD. PARTNERSHIP
9 3408 N. 60th Street
10 Phoenix, Arizona 85018

11 H₂O, Inc.
12 2125 E. 5th Street, Ste. 208
13 Tempe, AZ 85251

14 SALMON, LEWIS & WELDON
15 4444 N. 32nd Street, Suite 200
16 Phoenix, Arizona 85018

17 Kathy Aleman, Manager
18 WOLFCOR, L.L.C. & WOLFKIN FARMS
19 Southwest Properties, Inc.
20 3850 E. Baseline Road, Suite 123
21 Mesa, Arizona 85026

22 Dick Maes, Project Manager
23 VISTOSO PARTNERS, L.L.C.
24 1121 W. Warner Road, Suite 109
25 Tempe, Arizona 85284

Mary Walker
1620\3-2-2\pleadings\Application to Amend Decision

EXHIBIT A

STATE OF ARIZONA



Office of the
CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Secretary of the Arizona Corporation Commission, do hereby certify that

*****DIVERSIFIED WATER UTILITIES, INC.*****

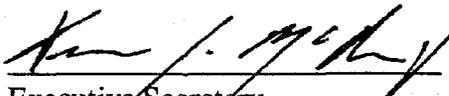
a domestic corporation organized under the laws of the State of Arizona, did incorporate on February 8, 1995.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation is not administratively dissolved for failure to comply with the provisions of the Arizona Business Corporation Act; that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-122, 10-123, 10-125 & 10-1622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed Articles of Dissolution as of the date of this certificate.

This certificate relates only to the legal existence of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 7th Day of October, 2004, A. D.




Executive Secretary

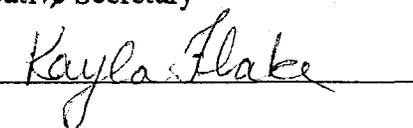
By 

EXHIBIT B

Docket

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

SEP 04 2001

DOCKETED BY	<i>VL</i>
-------------	-----------

1 WILLIAM A. MUNDELL
2 CHAIRMAN
3 JIM IRVIN
4 COMMISSIONER
5 MARC SPITZER
6 COMMISSIONER

6 IN THE MATTER OF THE APPLICATION OF
7 H₂O, INC., FOR AN EXTENSION OF ITS
8 EXISTING CERTIFICATE OF CONVENIENCE
9 AND NECESSITY.

DOCKET NO. W-02234A-00-0371

8 IN THE MATTER OF THE APPLICATION OF
9 JOHNSON UTILITIES, L.L.C. DBA JOHNSON
10 UTILITIES COMPANY FOR AN EXTENSION OF
11 ITS CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER AND
13 WASTEWATER SERVICE TO THE PUBLIC IN
14 THE DESCRIBED AREA IN PINAL COUNTY,
15 ARIZONA.

DOCKET NO. WS-02987A-99-0583

13 IN THE MATTER OF THE APPLICATION OF
14 JOHNSON UTILITIES, L.L.C. DBA JOHNSON
15 UTILITIES COMPANY FOR AN EXTENSION OF
16 ITS CERTIFICATE OF CONVENIENCE AND
17 NECESSITY TO PROVIDE WATER AND
18 WASTEWATER SERVICE TO THE PUBLIC IN
19 THE DESCRIBED AREA IN PINAL COUNTY,
20 ARIZONA.

DOCKET NO. WS-02987A-00-0618

17 IN THE MATTER OF THE APPLICATION OF
18 DIVERSIFIED WATER UTILITIES, INC. TO
19 EXTEND ITS CERTIFICATE OF CONVENIENCE
20 AND NECESSITY.

DOCKET NO. W-02859A-00-0774

20 IN THE MATTER OF THE APPLICATION OF
21 QUEEN CREEK WATER COMPANY TO
22 EXTEND ITS CERTIFICATE OF CONVENIENCE
23 AND NECESSITY.

DOCKET NO. W-01395A-00-0784

DECISION NO. 63960

OPINION AND ORDER

22 DATES OF PRE-HEARING CONFERENCES: October 11, 2000 and March 11, 2001
23 DATES OF HEARING: March 15, 16, 19, 20, and 21, 2001
24 PLACE OF HEARING: Phoenix, Arizona
25 PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern
26 APPEARANCES: Fennemore Craig, P.C. by Mr. Jay L. Shapiro
27 and Ms. Karen Errant, on behalf of H₂O, Inc.;
28 Lewis and Roca, L.L.P., by Mr. Thomas H.

1 Campbell and Mr. Michael L. Denby, on behalf
of Johnson Utilities Company;

2 Martinez & Curtis, P.C. by Mr. William P.
3 Sullivan, on behalf of Diversified Water
Utilities, Inc.;

4 Jordan and Bischoff, P.L.C., by Mr. Charles L.
5 Bischoff and Ms. Jenny J. Clevenger, on behalf
of Queen Creek Water Company; and

6 Ms. Teena Wolfe, Staff Attorney, Legal
7 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

8 **BY THE COMMISSION:**

9 On October 18, 1999, Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC") filed
10 with the Arizona Corporation Commission ("Commission") an application for an extension of its
11 Certificate of Convenience and Necessity ("Certificate") to provide water and wastewater services in
12 various parts of Pinal County, Arizona, in Docket No. WS-02987A-99-0583 ("583 Docket").

13 On November 1, 1999, JUC filed an amendment to its application in the 583 Docket.

14 On May 30, 2000, H₂O, Inc. ("H₂O") filed an application for an extension of its Certificate.

15 On June 15, 2000, JUC filed what was captioned its Second Amended Application which
16 revised its requested expansion area.

17 On July 5, 2000, JUC filed what was captioned its Third Amended Application which again
18 revised its requested expansion area because of additional requests for service from other property
19 owners.

20 On August 21, 2000, Pantano Development Limited Partnership ("Pantano") requested and
21 was subsequently granted intervention in the proceeding.

22 On August 23, 2000, by Procedural Order, the Commission consolidated the JUC application
23 as amended and the H₂O application for purposes of hearing on the contested portions of the above-
24 referenced applications. However, the Commission further ordered the bifurcation of JUC's
25 application regarding uncontested territory for both water and wastewater services into a separate
26 proceeding which was assigned Docket No. WS-02987A-00-0618 ("618 Docket").

27 On August 25, 2000, JUC filed what was captioned its Fourth Amended Application due to
28 additional requests for water and wastewater service.

1 On August 30, 2000, at the request of the Commission's Utilities Division ("Staff"), JUC and
2 H₂O, a teleconference was held. At that time, scheduling issues were resolved for the various filings
3 related to the proceedings.

4 A hearing was scheduled on the applications of JUC and H₂O to commence on October 19,
5 2000.

6 On September 29, 2000, five property owners who own approximately 500 acres of land
7 encompassed within JUC's 583 Docket requested intervention on behalf of a development to be
8 known as Skyline Ranch ("Skyline").

9 On October 2, 2000, Diversified Water Utilities, Inc. ("Diversified") filed a Motion to
10 Intervene, Motion in Opposition to Applications and to Continue Hearings, and Notice of Intent to
11 Present Testimony and Request for Waiver with respect to the JUC and H₂O applications pending
12 before the Commission. Diversified also filed an application for an extension of its Certificate in
13 Docket No. W-02859A-00-0774, stating that JUC's and H₂O's applications for the extension of their
14 Certificates to provide water service impact areas that are either within, contiguous to, or in the
15 vicinity of areas certificated to Diversified.

16 On October 4, 2000, Queen Creek Water Company ("Queen Creek") filed an application to
17 intervene in the JUC/H₂O proceeding and also filed an application for an extension of its Certificate
18 stating that JUC's and H₂O's applications to extend their Certificates to provide water service were in
19 areas either contiguous to or in the vicinity of the areas previously certificated to Queen Creek.

20 On October 4 and 10, 2000, respectively, Staff filed a memorandum in support of both
21 Diversified's and Queen Creek's applications to intervene in the JUC and H₂O proceedings.

22 On October 11, 2000, a teleconference was held in which JUC, H₂O, Diversified, Queen
23 Creek and Staff participated. Discussions took place concerning the issue raised by JUC's and
24 H₂O's applications along with the pending requests for intervention by Diversified and Queen Creek
25 along with their applications and their impact on the proceedings scheduled for hearing on October
26 19, 2000. Staff was also concerned with respect to the various issues and potential conflicts between
27 the pending applications. It was determined that the hearing should be continued for a period of time
28 to allow all parties to prepare for a hearing on the issues. This delay in the hearing date resulted in a

1 suspension of the time-frame rules, due to the unusual circumstances of the competing applications in
2 the respective Dockets.

3 On October 16, 2000, the Commission, by Procedural Order, consolidated the above-
4 captioned Dockets for purposes of hearing. The hearing previously scheduled for October 19, 2000
5 on the applications filed by H₂O and JUC was continued until March 15, 2001 with the applications
6 of Diversified and Queen Creek consolidated into the proceedings. October 19, 2000 was reserved
7 for taking public comment as that date had been previously noticed for hearing by H₂O and JUC.
8 The Commission further ordered that the pre-hearing conference scheduled for October 16, 2000, be
9 continued until March 12, 2001. Skyline was also granted intervention.

10 On October 19, 2000, the above-captioned proceeding was convened to take public comment.
11 The parties and Staff were present with counsel. Although no intervenors entered an appearance at
12 that time, a number of property owners for the areas involved in the respective applications were
13 present and made public comment.

14 On December 14, 2000, Southwest Properties, Inc. ("SPI") and Vistoso Partners, L.L.C.
15 ("Vistoso") requested and were subsequently granted intervention in the above-captioned proceeding.

16 On January 9, 2001, Staff filed its report with respect to the above-captioned applications.

17 On January 2, 2001, JUC filed a Request for Pre-Hearing Conference to review certain issues
18 which had arisen with respect to the above-captioned proceeding.

19 On January 5, 2001, by Procedural Order, the Commission scheduled a pre-hearing
20 conference on January 11, 2001.

21 On January 11, 2001, at the pre-hearing conference, a discussion took place involving a
22 possible settlement between JUC, H₂O and Queen Creek without the inclusion of Diversified.
23 However, it was pointed out that Pinal County was taking an active part in attempting to resolve the
24 competing applications of the parties and was also involved in the possible formation of a domestic
25 improvement district that was proposed to be formed in Diversified's certificated service area. The
26 parties also conducted discussions concerning possible changes in the filing dates of testimony
27 previously ordered, given that the testimony might be affected by the filing of any proposed
28 settlement.

1 On January 24, 2001, JUC, H₂O and Queen Creek (collectively "HJQ") filed what was
2 captioned "Notice of Filing Settlement Agreement and Joint Application for Approval Thereof"
3 ("Settlement Agreement"). HJQ indicated that they had reached a settlement of a number of issues
4 which had previously been contested. HJQ also represented that certain land owners and customers
5 who were served by Diversified had filed a petition with Pinal County requesting that the County
6 Board of Supervisors ("Pinal County Board") authorize the formation of a domestic water
7 improvement district "that will condemn, purchase or otherwise acquire the water utility facilities of
8 Diversified and become the water provider in what is now Diversified's certificated service area."
9 HJQ believed that, if the Pinal County Board approved the formation of the district that would
10 encompass Diversified's active service area, its application herein would be rendered moot.¹

11 On January 29, 2001, by Procedural Order, the Commission established the procedures to be
12 followed for the filing of any testimony and associated exhibits with respect to the scheduled hearing.
13 The Commission's Procedural Order also set forth the filing schedule for any responses or replies
14 with respect to the Settlement Agreement filed by HJQ. Subsequently, Diversified, Skyline and Staff
15 objected to the Settlement Agreement between HJQ.

16 On February 26, 2001, Arizona Utilities Supply & Services, L.L.C. ("AUSS") filed an
17 application to intervene in the above-captioned proceeding. AUSS indicated that it had received
18 requests from certain landowners or developers of properties which were involved in this proceeding.
19 AUSS indicated that it anticipated filing on or about March 1, 2001, an application for a Certificate to
20 provide sewer service to an area which is part of the pending proceeding involving JUC.

21 On March 5, 2001, JUC, H₂O and Queen Creek jointly filed an objection to the request by
22 AUSS to intervene. They argued that the application of AUSS was filed more than two months after
23 the deadline of December 15, 2000 set for filing requests for intervention in this proceeding.
24 Subsequently, on March 8, 2001, by Procedural Order, the application for intervention by AUSS was
25 denied.

26 _____
27 ¹ According to HJQ, only five of Diversified's nine certificated sections of land are presently able to be served by
28 Diversified. The remaining four sections are not served and are owned by the State of Arizona which cannot petition the
County to form an improvement district. HJQ cited A.R.S. § 48-902 and Attorney General Opinion 71-33 in support of
this argument.

1 On March 12, 2001, the final pre-hearing conference was held. During this pre-hearing
2 conference, Skyline withdrew its objection to the Settlement Agreement, and the parties also
3 discussed the presentation of evidence during the proceeding.

4 On March 15, 2001, a full public hearing was commenced before a duly authorized
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. JUC, H₂O,
6 Diversified, Queen Creek and Staff appeared with counsel. No intervenors appeared, but public
7 comment was taken and additional hearings were conducted on March 16, 19, 20 and 21, 2001.
8 Testimony was taken from utility witnesses, property owners, the Pinal County Manager and Staff.
9 Numerous exhibits were admitted into evidence during the course of the proceeding. Following the
10 conclusion of the hearing, the matter was taken under advisement pending submission of a
11 Recommended Opinion and Order to the Commission.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 FINDINGS OF FACT

16 1. Pursuant to authority granted by the Commission, JUC is certificated to provide water
17 and wastewater service to approximately 650 customers in an area of approximately forty-five square
18 miles southeast of Queen Creek in various parts of Pinal County, Arizona.

19 2. Pursuant to authority granted by the Commission, H₂O is certificated to provide public
20 water service to approximately 783 customers located in approximately 13 ½ sections of Pinal and
21 Maricopa Counties, Arizona.

22 3. Pursuant to authority granted by the Commission, Diversified is certificated to provide
23 public water service to approximately 140 customers in various parties of Pinal County, Arizona.

24 4. Pursuant to authority granted by the Commission, Queen Creek is certificated to
25 provide public water service to approximately 1,977 customers in various parts of southeast Maricopa
26 and northwest Pinal Counties, near the town of Queen Creek, Arizona.

27 5. On October 18, 1999, JUC filed an application for an extension of its Certificate to
28 provide water and wastewater service in various parts of Pinal County, Arizona. Subsequently, on

1 November 1, 1999, June 15, July 5 and August 25, 2000, JUC filed amendments to its application.
2 JUC is seeking an extension of its Certificate to include an area of approximately 26 and ½ square
3 miles which is more fully described in Exhibit A attached hereto and incorporated by reference in the
4 form of a designated parcel list.²

5 6. With its application, JUC is seeking to provide water and wastewater service to all 24
6 parcels with the exception of parcel 19, for which JUC seeks to provide wastewater service only, and
7 to delete parcels 14 and 20 from H₂O's certificated service area in order for JUC to provide both
8 water and wastewater to both parcels.

9 7. On May 30, 2000, H₂O filed an application for an extension of its existing Certificate
10 to provide water service to four contiguous sections of land reflected on Exhibit A as parcels 5, 6, 11,
11 14, 15, 16, 17, 18, and 22 which compromise approximately an additional 2,055 acres.

12 8. On October 2, 2000, Diversified filed an application for an extension of its existing
13 Certificate to provide public water utility service to approximately nine sections of land in various
14 parts of Pinal County, Arizona described as parcels 2, 14, 15, 16, 17 and 18 on Exhibit A. On
15 October 3 and November 2, 2000, Diversified filed amendments to its application to add additional
16 portions of parcel 14 and also added parcel 24 in order to provide service to a land owner who is
17 requesting water service from Diversified for approximately 20 acres of land.

18 9. On October 4, 2000, Queen Creek filed an application for an extension of its existing
19 Certificate to provide public water utility service for approximately four more sections of land
20 described as part of parcel 11, and parcels 15, 16, 17, 18 and 22 as set forth on Exhibit A. H₂O and
21 JUC are also requesting to serve that part of parcel 11 requested by Queen Creek, along with parcels
22 15, 16, 17, 18 and 22.

23 10. Notice of the above-captioned applications was given in the manner prescribed by law.

24 11. At the outset of the hearing, counsel for the parties to the Settlement Agreement
25 announced that they were withdrawing it from consideration before the Commission because
26 Diversified was not a party to the Agreement.

27
28 ² The parcel list was designed by Staff as a convenient way to reference the various requested extensions.

THE JOHNSON APPLICATION

1
2 12. In support of its application, JUC called the following witnesses to testify on its
3 behalf: Mr. Stanley Griffis, Ph.D., the Pinal County manager; Ms. Kathy Aleman, a principal with
4 SPI, a developer; Mr. Gerald Bowen, a principal with Bowen Properties, Inc.; Mr. Byron Handy,
5 president of BFH Development Corporation; Mr. Brian Tompsett, a civil engineer with WLB Group
6 which is the primary engineering consultant for JUC; and Mr. George Johnson, the managing
7 member of JUC.

8 13. During the public comment portion of the proceeding, it was indicated that Mr. Griffis
9 would testify on behalf of H₂O and JUC.

10 14. Mr. Griffis testified that he was making his recommendation on behalf of Pinal
11 County with respect to the applications of JUC, H₂O and Queen Creek as was resolved in the
12 Settlement Agreement filed by these three utilities on January 24, 2001.

13 15. Mr. Griffis indicated that he was instrumental in bringing together H₂O, JUC and
14 Queen Creek after they had been unable to reach an agreement with Diversified over the contested
15 areas occasioned by the competing applications.

16 16. According to Mr. Griffis, he had been contacted by several large landowners within
17 Diversified's certificated service area requesting help from the county in their dealings with
18 Diversified involving the use of their properties. These contacts came in approximately December,
19 2000.

20 17. In response to their concerns, Mr. Griffis had discussions with other Pinal County
21 officials and learned that a majority of the land owners within Diversified's certificated service area
22 "could petition Pinal County to form a water improvement district that could then seek to purchase,
23 condemn or otherwise acquire Diversified's facilities and become the authorized provider of water
24 utility service within that area."

25 18. Based on these discussions, Mr. Griffis believed that the Pinal County Board would
26 support the formation of such a district due to the concerns of property owners within Diversified's
27 certificated service area.
28

1 19. Mr. Griffis further testified that Pinal County is concerned that growth, which is
2 occurring rapidly, move in an orderly fashion to enhance the quality of life of its citizens by having
3 adequate water and wastewater utility services.

4 20. Pinal County is not interested in seeing excessive litigation delay the development of
5 growth within the respective areas sought to be certificated herein.

6 21. Pinal County wishes to have a prompt resolution of the disputes arising from the
7 competing applications herein because it anticipates significant revenue growth associated with
8 development.

9 22. According to Mr. Griffis, if Diversified is removed from the process of competing for
10 extensions of its certificated service area due to the formation of the district, JUC, H₂O and Queen
11 Creek indicated that they could resolve the issues brought about by their competing applications and
12 agree on a means of allocating extensions of service within the areas contested by the utilities.

13 23. Mr. Griffis believes that the crucial factor of the proposed settlement was the
14 agreement of Pinal County to support the formation of the Skyline Water Improvement District
15 ("Skyline District"). Mr. Griffis further testified that the District was not formed to harm Diversified
16 since it would receive adequate compensation, if need be, through litigation.

17 24. Mr. Griffis identified Resolution No. 031401-SDWID which was captioned "a
18 resolution of the Pinal County Board of Supervisors establishing the Skyline Domestic Water
19 Improvement District" that was approved on March 14, 2001 (the day before the hearing). He
20 identified large portions of the district included in parcel 2 and parcel 16 as delineated on Exhibit A
21 and pointed out that it also included significant portions of Diversified's certificated service area.

22 25. Although Mr. Griffis testified during the proceeding that he had received a number of
23 complaints about Diversified's service, during his deposition on November 28, 2000, he stated that he
24 was unaware of any complaints about service by Diversified.

25 26. Subsequently, Mr. Griffis' acknowledged that he had received mostly calls from
26 property owners within Diversified's certificated service area and not actual customers who received
27 service from Diversified.

1 27. With respect to Diversified's existing Certificate, Mr. Griffis described the Skyline
2 District as being composed of three separate and distinct parcels of land which are not contiguous to
3 one another and include sizeable portions of Diversified's certified area.

4 28. In concluding his testimony, Mr. Griffis indicated that he was satisfied that H₂O could
5 provide water service to parcel 15 (Pecan Ranch), parcel 16 (Home Place), and parcel 17 (Ware
6 Farms) as originally agreed upon in the proposed settlement, and that parcel 11 (Circle Cross Ranch)
7 could be provided with service by JUC.

8 29. Ms. Aleman testified that her company, SPI, is in the process of co-developing parcel
9 2, Bella Vista Farms ("Bella Vista"), an area which lies partially in Diversified's existing certificated
10 area and also outside of its certificated area, but contiguous to Diversified's southern boundary. Bella
11 Vista lies to the east of JUC's certificated area. She stated that SPI supports JUC's application and
12 the former proposed Settlement Agreement between JUC, H₂O and Queen Creek.

13 30. That portion of Bella Vista which lies within Diversified's certificated service area is
14 part of the Skyline District as is the remainder of the Bella Vista project which lies outside of
15 Diversified's certificated area.

16 31. Ms. Aleman testified that although no development has yet taken place in the Bella
17 Vista area, it is to be a master planned development completed "hopefully within the next three years
18 or so". The development consists of 3,800 acres which is controlled by SPI and other developers
19 who plan to build between 12,000 and 13,000 homes there.

20 32. Ms. Aleman testified that SPI preferred to keep its options open with respect to the
21 formation of the Skyline District for the provision of water service within Diversified's area and
22 favored JUC because, in her opinion, JUC is more qualified and able to provide water and wastewater
23 service, both physically and financially, to the Bella Vista area.

24 33. Mr. Bowen described his plans for approximately 200 acres in parcel 8, as delineated
25 on Exhibit A, where his company plans to build 127 homes after approval for his subdivision is
26 received from the Arizona Department of Real Estate. Approval of the Real Estate Department will
27 follow if JUC is approved as a provider of water and sewer service, because JUC has a designation of
28 an assured water supply.

1 34. There are no other water or wastewater providers in the vicinity of parcel 8 where Mr.
2 Bowen's property is located.

3 35. Mr. Handy testified that the developers he is assisting in the development of the 480
4 acres in parcel 17 (Ware Farms) are in agreement with the resolution reached in the Settlement
5 Agreement between JUC, H₂O and Queen Creek. They are desirous of H₂O being certificated to
6 provide water service in parcel 17 and that JUC be certificated to provide waste water treatment
7 service in parcel 17 for approximately 1,500 residential lots.

8 36. Mr. Handy expressed some reservations about the possibility of service from
9 Diversified and has heard that a water improvement district was being formed to provide service to
10 that area.

11 37. Mr. Handy further testified in support of JUC's application for parcel 1 because Mr.
12 Handy has a client, Arizona Farms, which has engaged him to market a 2,850 acre master planned
13 community to home builders who will require the availability of water and waste water service.

14 38. However, Mr. Handy indicated that development of parcel 1 in the Arizona Farms area
15 was "probably about 3 years away" and that sales of the property to homebuilders would then take
16 place.

17 39. Mr. Tompsett, the vice-president and director of operations for JUC's primary
18 engineering consultant, testified that Staff failed to consider JUC's construction schedule for the
19 development of two 600 gallons per minute wells that will almost triple JUC's capacity and
20 significantly increase JUC's storage, production and distribution capacity in the next few years.

21 40. Mr. Tompsett emphasized that JUC has a Designation of an Assured Water Supply
22 ("Designation") which will enable property owners who wish to be served with water service by JUC
23 to receive the necessary regulatory approvals for their projects more easily because of the
24 Designation³.

25 41. With respect to a tariff issue that had arisen from the fact that JUC had been charging
26 waste water rates from developers based on water meter sizes when the water meter was installed,
27

28 ³ JUC's current Designation is 5,967 acre feet of water per year.

1 even if no waste was being generated, Mr. Tompsett recommended that the tariff be amended so that
2 the waste water rate would be charged at a flat rate and not based on meter size when it was installed.
3 This is contrary to Staff's position that waste water rates should not become effective until waste
4 water is first produced.

5 42. Mr. Tompsett opined that JUC is better situated to provide service to the Bella Vista
6 Farms area than Diversified because of its stronger financial position and because of the scale of
7 JUC's infrastructure improvements that Diversified cannot achieve.

8 43. With respect to parcel 1 sought by JUC to be certificated herein, Mr. Tompsett
9 testified that JUC is currently certificated to provide service to an area immediately to the south and
10 to the west of parcel 1. This area contains a subdivision, Wild Horse Estates, that is currently being
11 built, and where a well has been drilled, water lines have been installed and the developer is
12 preparing to pave streets within the development.

13 44. Mr. Tompsett described JUC's plans for Bella Vista explaining that JUC would loop
14 the entire system from a main which it would run on Bella Vista Road.

15 45. During cross-examination, Mr. Tompsett acknowledged that JUC's three operating
16 water systems, the Johnson Ranch system, the Sun Valley Unit 5 system, and the Wild Horse Ranch
17 system, are not interconnected.

18 46. Mr. Johnson testified that JUC now is in compliance with the requirements of the
19 Arizona Department of Environment Quality ("ADEQ") which had previously cited JUC for repeated
20 compliance violations.

21 47. Mr. Johnson pointed out that after the issuance of a Procedural Order on March 8,
22 2001, JUC had fulfilled the requirements of Decision No. 62087 (November 19, 1999) in which the
23 Commission approved JUC's application for an extension of its Certificate to provide water and
24 wastewater service to approximately 30 sections of land, more than half of which is contained within
25 the San Tan Mountain Regional Park where JUC has been requested to construct facilities to provide
26 service to ramadas and other park areas. As a condition for the approval granted in Decision 62087,
27 JUC was required to file a number of copies of documents within one year of the effective date of the
28 Decision. JUC filed copies of documents such as a Pinal County franchise, evidence of compliance

1 with the Rules of ADEQ, and evidence that it had received its Designation from the Arizona
2 Department of Water Resources ("ADWR").

3 48. Mr. Johnson acknowledged that parcels 10 and 13 as delineated on Exhibit A are State
4 and Bureau of Land Management property which have no existing requests for service, and he
5 withdrew JUC's application for the certification of these parcels. However, Mr. Johnson disputed
6 Staff's ultimate recommendation with respect to parcel 1 (Arizona Farms) maintaining that
7 development is moving forward in that area and should be included in JUC's certificated service area.

8 49. Mr. Johnson also disagreed with Staff's recommendation that parcel 2 (Bella Vista) be
9 included in Diversified's certificated service area because that portion of Bella Vista presently in
10 Diversified's certificated service area is part of the Skyline District. He also stated that the owners of
11 Bella Vista have specifically requested that their property be included in JUC's Certificate area in
12 order that water and waste water treatment service will be available.

13 50. Mr. Johnson further testified that JUC still supports the Settlement Agreement reached
14 by JUC, H₂O and Queen Creek because it has the backing of the Pinal County Board.

15 51. While testifying, Mr. Johnson indicated that owners of parcels 3, 12, 6 and 5, the
16 Jorde, Morning Sun Farms, Cravath, and Skyline parcels, respectively, had resolved earlier
17 differences with JUC and now wish to be provided with public water and wastewater treatment
18 service by JUC.

19 52. Mr. Johnson acknowledged having been contacted by individuals who own property
20 within Diversified's certificated area who sought information with regard to the formation of a
21 domestic water improvement district. He also acknowledged that he had been involved in at least
22 several discussions with Mr. Griffis about general questions concerning the formation of a water
23 improvement district.

24 53. Mr. Johnson made no attempt to deny the fact that JUC had received a number of
25 complaints in the past, but stated that his utility is attempting to operate in a lawful manner and that a
26 number of the problems had been due to construction accidents when contractors cut JUC's water or
27 sewer lines.
28

1 54. Mr. Johnson also described JUC's plans for expansion for the provision of wastewater
2 treatment service to parcel 22, which lies north of the Union Pacific Railroad Company's tracks and
3 parcel 11.

4 55. With respect to a recent problem with its waste water tariff, Mr. Johnson believes that
5 the matter will be resolved in the near future; however, JUC will file a tariff which conforms to
6 Arizona law and the Commission's rules in the near future.

7 THE H₂O APPLICATION

8 56. H₂O, in support of its application, called the following witnesses: Mr. Donald
9 Schnepf, a 50 percent shareholder of H₂O and its president since October 5, 1972, and Mr. Richard
10 Bartholomew, H₂O's consulting engineer for the past two years.

11 57. Mr. Schnepf testified that H₂O had originally applied for an extension of its Certificate
12 to provide public water service in parcels 5, 6, 11, 14, 15, 16, 17, 18, 20, and 22 as delineated in
13 Exhibit A.

14 58. Pursuant to the terms of the Settlement Agreement, H₂O's Certificate would have been
15 extended to include that portion of parcel 14 not currently located within H₂O's existing Certificate
16 and parcels 15, 16, 17, 18 and 22 in Pinal County, Arizona, as delineated in Exhibit A. H₂O is also
17 requesting that its Certificate be extended to include Section 13, Range 7 East, Township 2 South, in
18 Maricopa County. H₂O is still desirous of providing water service to these areas.

19 59. H₂O is also requesting that the Country Thunder property, which lies south of the
20 Queen Creek Wash and is comprised of approximately the western 1/3 of Section 30, Range 8 East,
21 Township 2 South, in Pinal County, Arizona, be deleted from H₂O's Certificate since Queen Creek
22 actually provides water service to that parcel and is requesting the area be transferred to Queen
23 Creek.

24 60. Mr. Schnepf testified that, after he was contacted by Mr. Griffis, he learned that Pinal
25 County's Board had received a petition from landowners in Diversified's certificated service area
26 requesting that a water improvement district be created to replace Diversified as their water service
27 provider.

28

1 61. H₂O agreed to support the Settlement Agreement proposed by Pinal County in order to
2 reach an expeditious resolution of the competing applications and to avoid further problems.

3 62. H₂O is anxious for a prompt resolution of the dispute between the parties because of
4 its need to expand its system to ensure quality service at reasonable rates, and to meet Pinal County's,
5 the landowners' and developers' needs in order to promote orderly development.

6 63. Mr. Schnepf does not believe that it is in the public interest for Diversified to receive
7 an extension of its Certificate at this time based upon his review of a petition involved in the
8 formation of the Skyline District and because Diversified's existing facilities are not adequate to
9 serve any additional areas.⁴

10 64. H₂O's primary concern, with respect to the Staff Report issued on January 9, 2001, is
11 that approval of H₂O's application should be conditioned upon a variety of factors being satisfied and
12 that if they are not, the recommended conditional Certificate would be rendered null and void without
13 further order of the Commission. H₂O believes that Staff's approach is arbitrary and potentially
14 damaging to a landowner currently planning to commence development in approximately two years.

15 65. H₂O also takes exception to the proposed review process by Staff (as discussed
16 hereinafter) because H₂O would not be provided an opportunity to respond to Staff's
17 recommendation and this could result in problems with the extension of service into the new areas
18 approved for service in this proceeding.

19 66. According to Mr. Schnepf, H₂O has planned for the expansion of its system by
20 developing a "Master Plan" which Mr. Schnepf described as having been developed to serve the
21 contested areas in these proceedings and by the fact that H₂O supported the Settlement Agreement
22 before it was withdrawn from consideration.

23 67. Mr. Schnepf acknowledged that in 1978, H₂O had filed a Chapter 11 federal
24 bankruptcy reorganization action during his tenure as president.

25 68. Mr. Schnepf acknowledged that, in the past, H₂O had been delinquent in the payment
26 of property taxes prior to 1996 because its irrigation rates were insufficient to cover all of the
27

28 ⁴ Diversified presently has only one well, a pressure tank and an old 20,000 storage tank. It was completing the construction of a 200,000 gallon storage tank during the hearing.

1 company's expenses, including its property taxes. Subsequently, H₂O and Pinal County entered into
2 a settlement which called for a one-time payment of a portion of the taxes as satisfaction in full. This
3 payment was made in 1998.

4 69. Currently, H₂O's property taxes are current and have been since August 1998, with
5 sufficient reserves to pay taxes in the future when they are due.

6 70. Mr. Schnepf reiterated that H₂O, is seeking an extension of its Certificate for a portion
7 of parcel 14, and parcels 15, 16, 17, 18, and 22 as delineated on Exhibit A and located north and east
8 of the Union Pacific's railroad tracks.

9 71. Mr. Schnepf testified that Mr. Jim Wales, an individual who is involved in the
10 development of parcel 16 known as Home Place, prefers that H₂O be certificated to provide public
11 water utility service to his development.

12 72. Mr. Schnepf testified in great detail concerning the development of H₂O's Master Plan
13 and the manner in which facilities would be extended to the areas which it sought to be certificated
14 herein, including the development of a new production well that can produce 2,500 gallons of water
15 per minute.

16 73. Mr. Schnepf indicated that, during the settlement negotiations with JUC and Queen
17 Creek, "H₂O decided to relinquish some area to Queen Creek and to Johnson" with respect to areas
18 that had previously been contested in this proceeding.

19 74. While testifying, Mr. Schnepf explained that JUC had relinquished claims to provide
20 water for parcels 22, 14, 17, 18, 16, and 15.

21 75. Mr. Schnepf further testified that H₂O's Master Plan amply provides for the extension
22 of service to parcel 15 (Pecan Ranch), parcel 16 (Home Place), and parcel 17 (Ware Farms).

23 76. Mr. Schnepf believes that parcel 15 (Pecan Ranch) alone, if added to H₂O's system,
24 would add at least 3,000 more residential lots to H₂O's customer base. Additionally, he indicated that
25 the other parcels which H₂O is seeking to be certificated would add additional thousands of
26 customers.

27 77. Much of the requested extension area for parcel 16 (Home Place), will also be lost to
28 planned expansion by H₂O since it is also included within the Skyline District.

1 78. However, even in light of the fact that parcel 16, Home Place, has been included in the
2 Skyline District, H₂O believes that it is possible for the Commission to approve an extension of its
3 Certificate for that area.

4 79. All told, H₂O would ultimately realize approximately 8,100 additional customers from
5 the disputed parcels if the Commission authorizes an extension of H₂O's Certificate for the
6 uncertificated portion of parcel 14 and parcels 15, 16, 17, 18, and 22.

7 80. Mr. Schnepf indicated that he had also reached an understanding with JUC for it to
8 provide wastewater treatment service to all areas where H₂O is certificated for water service, subject
9 to Commission approval.

10 81. Like JUC, Mr. Schnepf acknowledged that H₂O has Commission-approved hook-up
11 fees to pay for much of its backbone plant.

12 82. H₂O's engineer, Mr. Richard Bartholomew, testified that in his opinion, Diversified
13 lacks adequate storage facilities to serve its current customers plus the proposed developments
14 planned in parcels 16 (Home Place) and parcel 17 (Ware Farms). He also testified that Diversified's
15 recent expansions with 6 inch mains would be inadequate to serve areas outside of Diversified's
16 existing certificated service area because of the distance from Diversified's well and storage facilities
17 to the location of the prospective customers.

18 83. Mr. Bartholomew also disagreed with Diversified's plans for expansion, stating that
19 transmission lines alone could not solve the service issues and that Diversified would need wells,
20 storage reservoirs and pump stations to provide the facilities necessary for future customers in the
21 areas sought to be certificated herein.

22 84. Mr. Bartholomew discussed in great detail his description of H₂O's Master Plan for
23 expanding its certificated service area, illustrating that the plan had been well thought out and would
24 be constructed with the approval of ADEQ.

25 THE DIVERSIFIED APPLICATION

26 85. In support of its case, Diversified called the following witnesses: Mr. Scott Gray, its
27 president; Mr. James Wright, Diversified's certified operator; and Mr. Greg Potter, an engineer
28

1 employed by Sunrise Engineering, Inc. that has been performing engineering services for Diversified
2 for several years.

3 86. In 1994, Mr. Gray acquired what was then known as Quail Hollow Water Company, a
4 troubled utility that was providing poor service in what was then a rural area. He did so because he
5 believed that the area bordered on the edge of future growth in the greater Phoenix metropolitan area
6 and because Diversified "was a good prospect for being economically viable and a profitable
7 venture."

8 87. Mr. Gray has previous experience in the water and wastewater business dating back to
9 the early 1980's when he and his wife acquired Oak Creek Utility Corporation, a small water and
10 wastewater utility in the area of Oak Creek Canyon, near Sedona, Arizona.

11 88. Although Mr. Gray is a practicing attorney, he has been certified as a Grade One
12 operator for water and wastewater systems for approximately three years.

13 89. When Diversified acquired the water utility from its former owners in 1995, the
14 system was under an ADEQ cease and desist order which had been issued for numerous violations
15 and inadequacies; however, the former owners were taking no action to cure the deficiencies.

16 90. Diversified's system at that time had approximately 25 customers who were served by
17 a single 50 gallons per minute well, a 5,000 gallon pressure tank and a single four-inch distribution
18 line approximately one mile long.

19 91. Diversified refurbished and made substantial improvements to its system by adding a
20 20,000 gallon storage following its acquisition of the utility. Diversified also added new electrical
21 panels, two booster motors, a pressurization system to pressurize the hydro-mantic tank and system, a
22 new pump and a chlorination treatment system.

23 92. By the time Diversified remedied the majority of its deficiencies in 1997, it had grown
24 to 170 customers.

25 93. Diversified is taking the following steps to increase its storage and production
26 capacity: attempting to purchase a 1,000 gallons per minute well within its certificated area; securing
27
28

1 ADEQ approval to construct a 250,000 gallon storage tank; and applying for a water infrastructure
2 authority ("WIFA) loan in the amount of \$378,000 to fund the aforementioned projects.⁵

3 94. Mr. Gray indicated that it has always been Diversified's intent to expand its
4 certificated service area beyond its existing 9 ½ sections of land. When Mr. Gray became aware in
5 September, 2000 of JUC's and H₂O's competing applications for areas contiguous to Diversified's
6 service area, Diversified filed for intervention in the proceedings and also filed a competing
7 application contesting those certain areas sought by JUC and H₂O.

8 95. In pre-filed testimony, Mr. Gray indicated that he disagreed with a number of Staff's
9 recommendations with respect to which utilities in competing areas should be approved to provide
10 utility services. He argued that Queen Creek already has more than 2,000 metered customers and has
11 a certificated service area encompassing approximately 31 square miles, JUC already covers
12 approximately 45 square miles and anticipates approximately 40,000 total residential metered
13 customers in those areas, and that H₂O, while it is only certificated to provide service to 13 ½
14 sections of land, is experiencing substantial customer growth.

15 96. According to Mr. Gray, Diversified would be "substantially benefited" if the
16 Commission approves the extension of its Certificate for parcel 16 (Home Place), parcel 17 (Ware
17 Farms), and parcel 2 (Bella Vista). Mr. Gray represented that the Home Place development
18 represents a potential for an additional 2,174 metered customers, Ware Farms represents a potential
19 for an additional 1,485 metered customers and Bella Vista represents a potential for an additional
20 12,800 metered customers.

21 97. Mr. Gray pointed out that if the Commission authorizes the extension of Diversified's
22 Certificate for the parcels which include Ware Farms and Home Place, Diversified will be able to
23 loop its system and operate more efficiently. Mr. Gray also pointed out that Diversified's service
24 lines are within 4,000 feet of the Ware Farms development and within 50 feet of the Bella Vista
25 project.

26
27 ⁵ Diversified has instituted a complaint against JUC in a separate proceeding, Docket Nos. W-02234A-00-0775;
28 WS-02987A-00-0775 and WS-02987A-00-0775 in which it alleges that JUC has interfered with Diversified's attempts to
purchase the well within its certificated area and is attempting to "foster dissatisfaction among landowners and
customers" of Diversified.

1 98. Additionally, approximately one and one-half sections of the Bella Vista development
2 are already within Diversified's certificated service area and, if the Commission approves the
3 addition to Diversified's Certificate of parcel 2, it would represent a natural growth area for
4 Diversified because a single service provider will provide consistency and efficiency.⁶

5 99. Diversified's small certificated service area has caused Mr. Gray to be concerned with
6 the inability to expand in a substantial portion of its certificated area because four sections of a total
7 of nine and one-half sections are owned by the State. A further area of concern is the fact that if
8 Diversified's Certificate is not extended, it will have less of an opportunity to obtain existing
9 irrigation wells which could be converted to potable use.

10 100. Diversified does not object to JUC offering sewer utility service within its certificated
11 service area.

12 101. In his pre-filed testimony, Mr. Gray, like the other utility owners, strongly disagreed
13 with Staff's proposal of a conditional Certificate being issued for its requested extension areas which
14 could be revoked by means of an automatic revocation if development and/or facilities were not
15 installed within two years of the effective date of the Decision herein.

16 102. In rejoinder, Mr. Gray pointed out that a number of Diversified's customers attended a
17 public hearing in connection with the formation of the Skyline District and expressed their
18 satisfaction with the service that was provided by Diversified. Mr. Gray cited comments by
19 individuals who spoke at the public hearing evidencing the improvement in service which they
20 received from Mr. Gray and Diversified after he acquired the water utility in 1995.

21 103. Mr. Gray testified that at the hearing regarding the Skyline District on February 28,
22 2001, Mr. Johnson was present and made statements to the Pinal County Board "that his trust would
23 buy all bonds the District needed to issue and would look for their repayments from revenues from
24 the water used and paid in the District."

25 104. Mr. Gray believes that JUC, assisted by Mr. Griffis, is involved in a concerted effort to
26 harm Diversified.

27
28 ⁶ It should be noted, however, that the entire Bella Vista project, including those areas already certificated to
Diversified, are within the recently formed Skyline District.

1 105. Mr. Gray also testified that Diversified was not invited to discuss any of the alleged
2 concerns raised by landowners within Diversified's certificated service area or their desire to form an
3 improvement district. Additionally, Diversified was not notified or invited to attend any of the
4 settlement discussions conducted by Mr. Griffis with JUC, H₂O or Queen Creek.

5 106. Based on the number of dwelling units in projects such as Ware Farms, Home Place
6 and Bella Vista, Mr. Gray calculated that Diversified would receive approximately \$14 million due to
7 its \$850 per connection charge if Diversified was certificated to provide service to those areas.

8 107. Much of the area sought to be certificated by Diversified herein is located in the
9 vicinity of parcels that were previously subject to lot splitting; however, based on the evidence, the
10 parcels involved in the instant applications are presently devoted to farming or are large vacant tracts
11 of land waiting to be developed.

12 108. Commission approval of Diversified's application to provide water service to large
13 areas of land is important to Diversified because, as development takes place, it will be able to loop
14 its system and develop backbone plant paid for by the collection of its hook-up fees.

15 109. Mr. Gray testified that Diversified is absolutely and unconditionally ready, willing and
16 able to proceed with the development of facilities to provide service to parcels 2, 16, 17, 18 and 24.

17 110. Mr. Gray argued that the Commission has the authority to approve the extension of
18 Diversified's Certificate to areas included within the Skyline District such as Bella Vista. Pursuant to
19 A.R.S. §48-909(D), a certificated public utility is entitled to be compensated by an improvement
20 district if it has previously constructed facilities which are acquired by the district. However, the
21 right to compensation shall not apply if no facilities of the public utility are actually acquired by the
22 improvement district and a Certificate is issued to the corporation for any area which is within an
23 improvement district at the time the Certificate is issued, as would be the case here.

24 111. Mr. Gray acknowledged that outside of parcel 24, the property owners in the
25 remaining parcels for which it is seeking an extension of its Certificate have not requested service
26 from Diversified.

27
28

1 112. Mr. Gray also stated that the formation of the Skyline District will be injurious to
2 Diversified because it may limit its opportunities for growth within its existing certificated service
3 area.

4 113. Mr. Gray blames the formation of the Skyline District upon the collusive efforts of
5 JUC, H₂O and Queen Creek entering into the Settlement Agreement and thereby acquiescing to the
6 formation of the district in areas sought to be certificated herein and in various parts of Diversified's
7 certificated service area.

8 114. Mr. Gray alleged that the petition, which had been utilized to request that Pinal
9 County form the Skyline District, contained signatures of Diversified's customers that had been
10 obtained through fraudulent means.

11 115. Diversified's business office is located in Mesa, Arizona, at a company by the name of
12 FaciliGroup with whom it has contracted to provide billing and other services. It was also established
13 that Diversified does not have an on-site manager.

14 116. Based on the record, Diversified has made no definite plans for projected growth
15 because without definite plans from developers, any plans to accommodate the growth would be
16 highly speculative.

17 117. One of the proponents of the Skyline District was involved in a complaint proceeding
18 previously with Diversified before the initiation of the development of the district.

19 118. Mr. Gray acknowledged that there were a number of ways to provide evidence to Staff
20 that development was occurring in the subject parcels such as the following: filing a copy of a
21 Master Plan; submitting drawings of installed plant; filing documentation which establishes water is
22 being sold in the subject parcel; filing evidence that customers of the company are located in a
23 subject parcel; filing evidence that a utility has acquired existing wells or well sites in a subject
24 parcel; submitting evidence of the removal of an unused plant; and submitting evidence of steps
25 taken to bring a new well on line.

26 119. Mr. Gray is unaware of any existing customers of Diversified whose property is
27 located within the boundaries of the newly formed improvement district.

28

1 120. While Mr. Gray objected to the conditional form of a Certificate being awarded to any
2 of the subject parcels herein, he has not objected to the form of Certificates previously awarded by
3 the Commission in extension proceedings or in certification proceedings which were conditioned
4 upon the utility meeting certain requirements in the past. He is objecting to the requirement of
5 providing evidence that third parties are proceeding with development because the previous
6 Commission Certificates and extensions of Certificates were within the control of the utility and not
7 third parties.

8 121. It was acknowledged that Diversified does not have any existing full-time employees.
9 However, Mr. Gray indicated that, if Diversified is awarded significant extensions of its Certificate
10 resulting in a larger customer base and increased revenues, Diversified, rather than relying on
11 contract employees, will retain and add permanent full-time employees as needed.

12 122. Diversified's certified operator, Mr. Jim Wright, is also employed on a full-time basis
13 by the City of Scottsdale as a Water Maintenance Technician engaged in the operation of Scottsdale's
14 public water system.

15 123. Mr. Wright acknowledged that, while ADEQ has found no major deficiencies with
16 Diversified's current operations, ADEQ had found that Diversified lacked adequate storage with only
17 a 20,000 gallon storage tank. However, when its new 200,000 gallon storage tank (reduced from
18 250,000 gallons) is completed, this problem will be resolved.

19 124. According to Mr. Wright, with Diversified's addition of a new 200,000 gallon storage
20 tank and a 5,000 gallon pressure tank, Diversified will provide a reliable water system for its existing
21 customers and a solid base for future growth.

22 125. During the two years that Mr. Wright has been with Diversified, there have been
23 relatively few service problems. He also indicated that Diversified responds promptly to any
24 problems when they arise.

25 126. Mr. Wright believes that if Diversified's application is approved for the expansion of
26 its system to the Home Place, Ware Farms and Bella Vista parcels, Diversified's system would be
27 "greatly enhanced" because developers would be required to pay Diversified's hook-up fees resulting
28 in funds to allow for additional backbone plant to be constructed and interconnected with the rest of

1 Diversified's system and thereby producing more revenues to produce funds for improvements, and
2 the hiring of more employees to serve its customers.

3 127. According to testing conducted by an independent laboratory, Diversified's nitrate
4 level was extremely low, and unlike H₂O and JUC, Diversified was not required to do quarterly
5 sampling.

6 128. Mr. Wright acknowledged that because of his full-time employment with the City of
7 Scottsdale, he is not always available to handle emergency situations, but that because Mr. Gray is
8 also a certified operator, he too can address customer complaints.

9 129. Because Diversified's system is small, it is currently not looped and Mr. Wright is
10 required to flush Diversified's mains every week and test the chlorine levels to insure water quality.

11 130. At its present size, Diversified lacks the capacity to handle fire flows at the present
12 time.

13 131. Mr. Greg Potter, an engineer whose firm has been working for Diversified for several
14 years, testified that his firm had been retained to insure that Diversified's water system is designed to
15 meet the requirements of ADEQ and the Maricopa Association of Government Standards. Mr. Potter
16 related that lot splitters and small sub-dividers create problems for water companies such as
17 Diversified because they fail to cooperate with the utility to build a quality water system because
18 "they take every cost cutting opportunity available to them."

19 132. Mr. Potter opined that it would be in the public interest for Diversified's existing
20 system to be expanded to serve quality growth areas such as those to the northwest represented by
21 Ware Farms and Home Place and to the south with Bella Vista. He stated that such expansion would
22 enable Diversified to ultimately loop its entire system and give it an opportunity to increase its water
23 production and storage capacity, thereby, benefiting its customers.

24 133. Mr. Potter indicated that Diversified, in anticipation of expansion, installed new
25 distribution mains of at least six inches or larger to meet future demands.

26 134. Because approximately 40 percent of Diversified's certificated service area is owned
27 by the State, Mr. Potter believes that it is most important for Diversified to be able to extend its
28 boundaries to the parcels sought to be certificated herein to experience quality growth of its system.

1 135. According to Mr. Potter, Diversified is continuing to improve its existing system by
2 improving its well site, adding storage, and enhancing its transmission lines. He also stated that
3 Diversified is mapping and modeling its existing system so it will be able to promptly advise
4 developers of what facilities must be added as development takes place.

5 136. Mr. Potter is in agreement with Staff's recommendation for the expansion of
6 Diversified Certificate to include Bella Vista, and is also in favor of the northwest expansion to the
7 Home Place and Ware Farms parcels in order to loop the distribution system in that area to prevent
8 water from becoming stagnant.

9 137. Mr. Potter also expressed concerns with respect to Staff's recommendations
10 concerning the issuance of conditional Certificates with respect to the extension of any of the parties'
11 Certificates because of the uncertain nature of the timing when development will take place in the
12 proposed expansion areas.

13 138. Mr. Potter believes that due to the formation of the Skyline District, which includes
14 large areas of developable land within Diversified's certificated area, the potential for Diversified's
15 growth will be limited unless additional extensions of its Certificate are approved.

16 139. Mr. Potter acknowledged that, if Diversified's certificated service area is expanded to
17 such parcels as Home Place and Ware Farms, Diversified will have to develop other sources of water.

18 140. If the developmental plans for the Skyline District do not go forward, depending upon
19 future development in Diversified's plant or its existing certificated service area, Diversified will
20 have to develop another source of water.

21 141. Mr. Potter acknowledged that, although he had developed Diversified's water system
22 map (or, as he termed it, a "hydraulic model") so that projected growth could be evaluated for future
23 development, he had not actually physically visited Diversified's plant or its certificated service area.

24 142. According to Mr. Potter, Diversified has sufficient utility plant with which to serve the
25 initial demand of that portion of Bella Vista presently within its certificated service area through a
26 main extension; however, if parcel 2 is approved for Diversified, it will require much more in the way
27 of facilities and backbone plant to provide service.

1 THE QUEEN CREEK APPLICATION

2 143. On March 15, 2001, at the outset of the hearing on these proceedings, Queen Creek
3 announced that it was withdrawing from active participation in the hearing itself, but not the outcome
4 of the proceeding. Queen Creek withdrew its testimony and announced a "swap of territory" that had
5 been agreed upon with H₂O.

6 144. The swap evolved from the Settlement Agreement between JUC, H₂O and Queen
7 Creek and, although the proposal for the Commission's approval of the January 2001 Settlement
8 Agreement has been withdrawn, H₂O and Queen Creek have elected to request approval of the swap
9 and for two sections of land contiguous to their existing certificated service areas.

10 145. On February 16, 2001, Queen Creek published notice of the proposed Settlement
11 Agreement and the swap. In response thereto, the Commission has not received any protests of the
12 agreed upon transfer between H₂O and Queen Creek or their request for certification of two
13 contiguous sections of land. In fact, correspondence has been received in support of the requests of
14 H₂O and Queen Creek.

15 146. Queen Creek's and H₂O's proposed trade involves the following; the transfer of the
16 property known as Country Thunder from H₂O to Queen Creek comprised of the western one-third
17 below the Queen Creek wash of Section 30, Township 2 South, Range 8 East; Section 13, Township
18 2 South, Range 7 East would be certificated to H₂O; and the eastern three-fourths comprised of the
19 uncertificated portion of Section 14, Township 2 South, Range 7 East be certificated to Queen
20 Creek.⁷

21 147. JUC has also indicated its willingness to provide wastewater service to the Country
22 Thunder property.

23 STAFF'S RECOMMENDATIONS

24 148. With the filing of the Staff Report on January 9, 2001, Staff recommended approval of
25 various portions of JUC's, H₂O's, Diversified's and Queen Creek's applications herein subject to the
26 Certificates being made conditional upon a number of factors being satisfied by the respective
27

28 ⁷ The western quarter of Section 14, Township 2 South, Range 7 East is presently within Queen Creek's
certificated service area.

1 applicants and their continuing to charge their existing rates and charges in their respective extension
2 areas in the respective parcels as further delineated in Exhibit A. Staff also recommended the denial
3 of applications for certain parcels.

4 149. However, due to the ongoing nature of these proceedings, Staff amended a number of
5 its recommendations and, in a post-hearing filing on March 27, 2001, memorialized the amendments
6 which it made during the actual hearing.

7 150. Staff's witness, Mr. Mark DiNunzio, emphasized that he is not convinced that
8 development will take place in a timely manner as previously stated because he believes that there
9 has been a good deal of speculation presented by developers who would be able to capitalize on the
10 increased value of their property if it is included in a utility's Certificate. Therefore, Mr. DiNunzio
11 recommends that any Certificate from this proceeding be granted conditionally and subject to a
12 review after two years to determine the extent of development. As part of the two-year review, Staff
13 would have an additional period of time to review the development, or lack thereof, and file a report
14 either recommending final approval of the Certificate as requested, final approval of the Certificate
15 for the portions of the areas requested where development has taken place with a cancellation of the
16 remaining areas, and/or disapproval of the Certificate for all areas requested if no development has
17 taken place.

18 151. Staff indicates that since 1998, JUC has had 15 complaints, H₂O has had ten
19 complaints, Diversified has had no complaints and Queen Creek has had four complaints.

20 152. With respect to compliance issues, Staff found that JUC, H₂O, Diversified and Queen
21 Creek are current on their property taxes and filings with the Commission and are presently in
22 compliance with the rules of ADEQ with the exception of securing various approvals and permits to
23 construct and/or the filing of franchises for the requested parcels herein.

24 JUC

25 153. With respect to JUC's application for the extension of its water and wastewater
26 Certificate, Staff is recommending the following:

- 27 • that JUC's wastewater Certificate be conditionally extended to include parcels
28 2, 14, 15, 16, 17, 18, 19, 20, and 22;

- 1 • that JUC's water and wastewater Certificates be conditionally extended to
2 include parcels 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23;
- 3 • that JUC's application for parcel 1 be denied;
- 4 • that JUC's application with respect to its request to provide service for parcels
5 10 and 13 be withdrawn as requested by JUC;
- 6 • that JUC file a copy for a request for service to parcel 8 within 90 days of the
7 effective date of this Decision;
- 8 • that JUC file with the Commission in this Docket; within two years of the
9 effective date of this Decision, a copy of its franchise from Pinal County for
10 the extension of its Certificate for the areas authorized herein;
- 11 • that JUC file with the Commission in this Docket, within two years of the
12 effective date of this Decision, copies of all Certificates of Approval to
13 Construct ("CAC") and Certificates of Approval of Construction for
14 development in each of the respective approved parcels as authorized
15 hereinafter;
- 16 • that JUC file, within two years of the effective date of this Decision, a request
17 for Certificate review after which, Staff, at its discretion, shall perform a
18 physical plant inspection to determine the extent to which development has
19 commenced.⁸

20 After submission of JUC's request for review, Staff shall have 120 days to file a report
21 containing one of the following three recommendations:

- 22 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 23 ♦ final approval of the Certificate for portions of the parcels approved in this
24 proceeding with the cancellation of the undeveloped portions of the parcels; or
- 25 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

26
27 ⁸ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 154. Staff further recommends that JUC file, within 30 days of the anniversary date of this
2 Decision each year for the next two years, documentation from ADEC indicating that JUC has been
3 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
4 or failure to correct any major or minor violation within 30 days from the date of notice of violation
5 should result in the Certificate authorized hereinafter becoming null and void without further order of
6 the Commission.

7 155. Staff further recommends that JUC file, within 30 days from the effective date of this
8 Decision, an amended waste water tariff schedule which includes language for its wastewater rates
9 and charges to state that said charges shall not become effective until wastewater first flows into the
10 collection system.

11 156. Staff further recommends that, if JUC fails to meet any of the aforementioned
12 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
13 considered null and void without further order by the Commission.

14 H₂O

15 157. With respect H₂O's application for the extension of its Certificate to provide public
16 water service, Staff is recommending the conditional approval of the application to extend service to
17 that portion of parcel 14 not previously certificated and parcels 15, 16, 17, 18, 22 and Section 13.
18 Township 2 South, Range 7 East in Maricopa County, Arizona.

19 158. Staff further recommends that H₂O file, within two years of the effective date of this
20 Decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") to be issued by
21 the Arizona Department of Water Resources ("ADWR") for the respective parcels and sections.

22 159. Staff further recommends that H₂O file, within two years of the effective date of this
23 Decision, a copy of its CAC to be issued by the ADEQ for the main extension for the Combs School.

24 160. Staff also recommends that H₂O file, within two years from the effective date of this
25 Decision, a copy of its franchise from Pinal County for the extension areas represented by the
26 aforementioned parcels and Section 13.

27 161. Staff is also recommending the following:
28

- 1 • that H₂O file with the Commission in this Docket within two years of the effective
2 date of this Decision, a copy of its franchise from Pinal County for the extension of its
3 Certificate for the areas authorized hereinafter;
- 4 • that H₂O file with the Commission in this Docket, within two years of the effective
5 date of this Decision, copies of all Certificates of Approval to Construct ("CAC") and
6 Certificates of Approval of Construction for development in each of the respective
7 approved parcels as authorized hereinafter;
- 8 • that H₂O file, within two years of the effective date of this Decision, a request for
9 Certificate review after which, Staff, at its discretion, shall perform a physical plant
10 inspection to determine the extent to which development has commenced.⁹

11 After submission of H₂O's request for review, Staff shall have 120 days to file a report
12 containing one of the following three recommendations:

- 13 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 14 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
15 with the cancellation of the undeveloped portions of the parcels; or
- 16 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

17 162. Staff further recommends that H₂O file, within 30 days of the anniversary date of this
18 Decision each year for the next two years, documentation from ADEQ indicating that H₂O has been
19 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
20 or failure to correct any major or minor violation within 30 days from the date of notice of violation
21 should result in the Certificate authorized hereinafter becoming null and void without further order of
22 the Commission.

23 163. Staff further recommends that, if H₂O fails to meet any of the aforementioned
24 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
25 considered null and void without further order by the Commission.

26

27 ⁹ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
29 the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
30 information Staff deems relevant.

1 DIVERSIFIED

2 164. With respect to Diversified's application for an extension of its Certificate, Staff is
3 recommending that the Commission approve the extension of its Certificate to include parcels 2 and
4 24.

5 165. Staff is further recommending that Diversified file, within two years of the effective
6 date of this Decision, the following: the developers' CAWS to be issued by ADWR; copies of its
7 CAC's to be issued by ADEQ; and a copy of its franchise for parcels 2 and 24 which are to be issued
8 by the Pinal County Board.

9 166. Staff is also recommending the following:

- 10
- 11 • that Diversified file with the Commission in this Docket, within two years of the
12 effective date of this Decision, copies of all Certificates of Approval to Construct
13 ("CAC") and Certificates of Approval of Construction for development in each of the
14 respective approved parcels as authorized hereinafter;
 - 15 • that Diversified file, within two years of the effective date of this Decision, a request
16 for Certificate review after which, Staff, at its discretion, shall perform a physical
17 plant inspection to determine the extent to which development has commenced.¹⁰

18 After submission of Diversified's request for review, Staff file a report containing one of the
19 following three recommendations:

- 20 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 21 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
22 with the cancellation of the undeveloped portions of the parcels; or
- 23 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

24 167. Staff further recommends that Diversified file, within 30 days of the anniversary date
25 of this Decision each year for the next two years, documentation from ADEQ indicating that
26 Diversified has been in compliance with ADEQ for each year and that failure to submit this

27 ¹⁰ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 documentation in the Docket or failure to correct any major or minor violation within 30 days from
2 the date of notice of violation should result in the Certificate authorized hereinafter becoming null
3 and void without further order of the Commission.

4 168. Staff further recommends that, if Diversified fails to meet any of the aforementioned
5 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
6 considered null and void without further order by the Commission.

7 QUEEN CREEK

8 169. With respect to Queen Creek's application for an extension of its Certificate, Staff is
9 recommending the approval of Queen Creek's request for the extension of its Certificate to provide
10 water service to the eastern three-quarters of Section 14, Township 2 South, Range 17 East for which
11 it is not yet certificated subject only to the condition that Queen Creek files, within 365 days of the
12 effective date of this Decision, a copy of its Maricopa County franchise issued by the Maricopa
13 County Board of Supervisors or the approval granted hereinafter will be rendered null and void. Staff
14 is also recommending that the Country Thunder parcel, located in Section 30, Township 2 South,
15 Range 3 East, Pinal County, Arizona, be deleted from H₂O's Certificate and transferred to Queen
16 Creek's Certificate.

17 170. After reviewing the evidence in its entirety, we commend Staff at the end of this long
18 and complex proceeding and find the majority of their recommendations are reasonable in light of the
19 speculative nature of the purported development which is to take place in large undeveloped areas in
20 Pinal County, Arizona. Based on this speculation, we believe that Staff has made well-reasoned
21 unbiased recommendations with respect to recommending the issuance of conditional Certificates
22 which will be subject to further Commission review in the future.

23 171. For the present, we will adopt Staff's recommendations with the exception of Parcel 2
24 with respect to the approvals granted hereinafter for the respective parcels, except that we find Parcel
25 1 should be certificated to JUC, as are described in Exhibits A and B attached hereto. With respect to
26 Parcel 2, because of uncertainty with respect to the Skyline District and potential litigation in state
27 court, we shall deny all applications for this parcel at this time. However, with respect to Staff's
28 recommendation that an affected utility (JUC, H₂O, Queen Creek, and Diversified) shall cure any

1 minor or major violation of a requirement of ADEQ within 30 days from the date of notice of
2 violation, thus resulting in the nullification of an extension of that utility's Certificate, we find Staff's
3 recommendation to be too extreme and will allow the violating utility a period of 90 days from the
4 date of notice of the violation to either cure the violation or to request an extension of time in which
5 to resolve the problem with ADEQ. We shall also require JUC, H₂O, Diversified and Queen Creek to
6 file the correct legal descriptions for the respective parcels within 30 days of the effective date of this
7 Decision.

8 CONCLUSIONS OF LAW

9 1. Applicants, JUC, H₂O, Diversified and Queen Creek are public service corporations
10 within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-
11 282.

12 2. The Commission has jurisdiction over JUC, H₂O, Diversified and Queen Creek and of
13 the subject matter of the applications as amended.

14 3. Notice of the applications as amended and described herein was given in the manner
15 prescribed by law.

16 4. The public convenience and necessity require the public would benefit by the
17 amendment of the Certificates of JUC, H₂O, Diversified and Queen Creek so that their certificated
18 service areas include the parcels and sections more fully described in Exhibits A and B.

19 5. JUC, H₂O, Diversified and Queen Creek are fit and proper entities to receive amended
20 Certificates which encompass the areas more fully described in Exhibits A and B.

21 6. Staff's recommendations with respect to the applications of JUC, H₂O, Diversified and
22 Queen Creek, as set forth in Findings of Fact Nos. 153, 154, 156, 157, 158, 159, 160, 161, 162, 163,
23 164, 165, 166, 167, 168, 169, and 171 for the amendment of their respective Certificates, should be
24 approved, except that we find parcel 1 should be certificated to JUC and no certificate should be
25 issued for parcel 2, subject to the recommendations of Staff with the exception that a utility cited for
26 either a minor or major violation by ADEQ within the two year period of review following the
27 effective date of this Decision should have 90 days from the date of the notice of violation to cure the
28 defect or request an extension from the Commission in order to remedy the violation.

ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS THEREFORE ORDERED that the applications of Johnson Utilities, L.L.C., dba Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc., and Queen Creek Water Company for amendment of their Certificates of Convenience and Necessity for the operation of the applicable water and/or waste water facilities in the areas more fully described in the parcels as set forth in Exhibits A and B attached hereto be, and are hereby, conditionally approved subject to the respective utilities meeting the applicable conditions as set forth in Findings of Fact Nos. 153, 154, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171 and Conclusions of Law Nos. 4, 5 and 6 above.

IT IS FURTHER ORDERED that in the event Johnson Utilities, L.L.C dba Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company do not timely meet the requirements according to Staff's recommendations as set forth in Findings of Fact Nos. 153, 154, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171, or fail to cure any major or minor violations cited by ADEQ within 90 days from the date of notice or request an extension therefrom, then such conditional Certificate granted herein for the respective parcel shall be rendered null and void without further order of the Commission.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall file, if not previously filed, correct legal descriptions for the parcels and/or sections amending their Certificates of Convenience and Necessity as described herein.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall charge those customers in the areas more fully described in Exhibits A and B their existing rates and charges until further Order of the Commission.

...
...
...
...

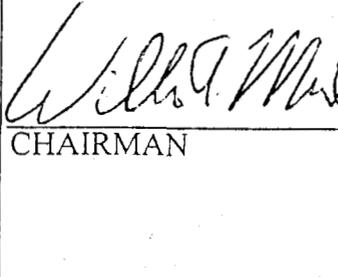
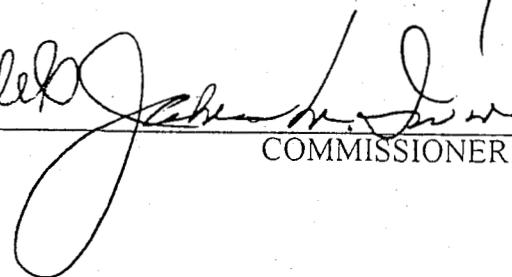
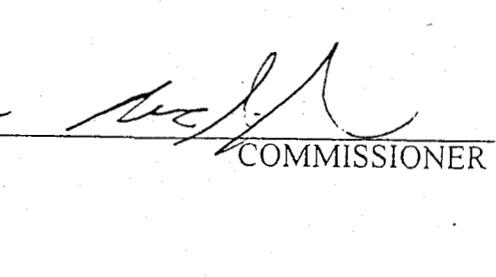
NA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

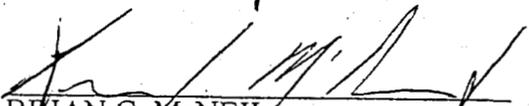
IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall file, within 30 days of the effective date of this Decision, with the Director of the Commission's Utilities Division, an amended tariff schedule which addresses the issue described in Findings of Fact No. 155.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 4th day of September, 2001.


 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

DISSENT _____
MES:dap

1 SERVICE LIST FOR:

H₂O, INC.; JOHNSON UTILITIES, LLC;
2 DIVERSIFIED WATER UTILITIES, INC; and QUEEN
CREEK WATER COMPANY

3 DOCKET NOS.

4 W-02234A-00-0371; WS-02987A-99-0583; WS-
02987A-00-0618; W-02859A-00-0774; and W-01395A-
5 00-0784

6 Thomas H. Campbell
Michael Denby
LEWIS AND ROCA, L.L.P
7 40 N. Central Avenue
Phoenix, AZ 85004
8 Attorneys for Johnson Utilities, L.L.C.

9 Jay Shapiro
Karen E. Errant
10 FENNEMORE CRAIG, P.C.
3003 N. Central, Ste. 2600
11 Phoenix, AZ 85012
Attorneys for H2O Water Company

12 Charles A. Bischoff
13 JORDAN & BISCHOFF
7272 E. Indian School Road, Ste. 205
14 Scottsdale, AZ 85251
Attorneys for Queen Creek Water Company

15 Jeffrey C. Zimmerman
16 Brad K. Keogh
MOYES STOREY, LTD.
17 3003 N. Central, Ste. 1250
Phoenix, AZ 85012
18 Attorneys for Arizona Utility Supply & Service, L.L.C.

19 William Sullivan
20 MARTINEZ & CURTIS, P.C.
2712 N. 7th Street
Phoenix, AZ 85008

21 Petra Schadeberg
22 PANTANO DEVELOPMENT LTD. PARTNERSHIP
3408 N. 60th Street
23 Phoenix, AZ 85018

24 Richard N. Morrison
25 SALMON, LEWIS & WELDON
4444 N. 32nd Street, Ste. 200
26 Phoenix, AZ 85018

27 ...

28 ...

1 Kathy Aleman, Manager
WOLFCOR, L.L.C. & WOLFKIN FARMS
2 Southwest Properties, Inc.
3850 E. Baseline Road, Ste. 123
3 Mesa, AZ 85026

4 Dick Maes, Project Manager
VISTOSO PARTNERS, L.L.C.
1121 W. Warner Road, Ste. 109
5 Tempe, AZ 85284

6 Christopher Kempley, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, Arizona 85007

9 Steve Olea, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, Arizona 85007

Arizona Corporation Commission
H2O/Johnson Utilities/Diversified/Queen Creek
Request for CC&N Extension Areas
Docket Nos. W-2234-00-371, et al.

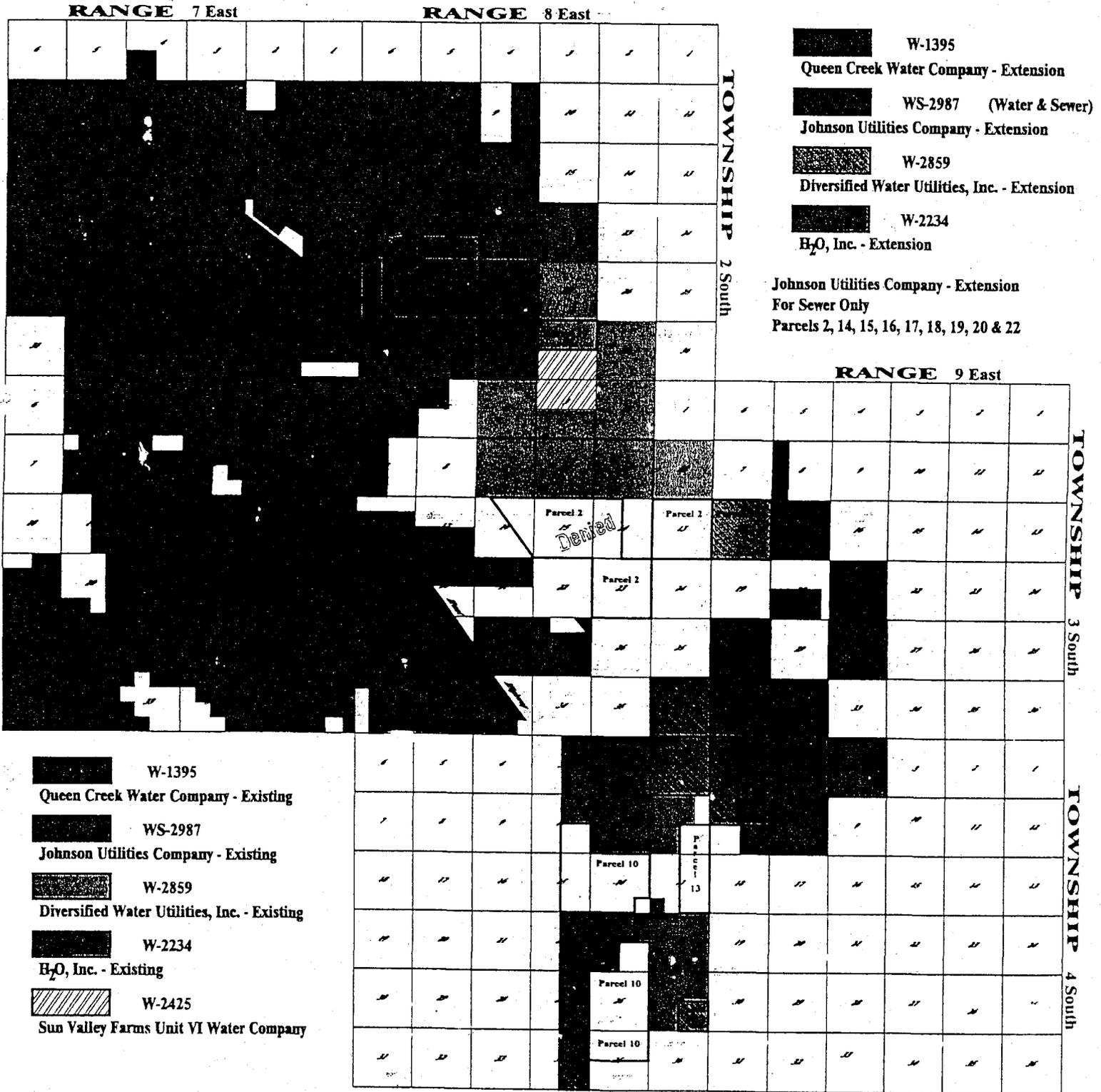
Parcel	Development	Twp/Rng	Description
1	Arizona Farms		
2	Bella Vista Farms		
3	Jorde Farms		
4	Whitehead		
5	Skyline		
6	Morning Sun Farms		
7	Shelton		
8	Various		
9	Farley Farms		
10	State of Arizona/Future Development		
11	Circle Cross Ranch (W of RR)		
12	Jorde/Morning Sun Farms		
13	BLM Property		
14	Johnson Farms/Combs School		
15	Pecan Estates		
16	Home Place		
17	Ware Farms		
18	Various		
19	Various		
20	Pecan Ranch		
21	Dobson Farms		
22	Circle Cross Ranch (E of RR)		
23	Magma Ranch		
24	Development - Sec 18, T3S, R9E		

Country Thunder	T2S, R8E	W 1/3 of Section 30
Miscellaneous	T2S, R7E	E 3/4 of Section 14

EXHIBIT 'A'

DECISION NO. 63960

ALLOCATION OF REQUESTED AREAS



JOHNSON UTILITIES COMPANY, ET AL.
DOCKET NO. WS-2987-99-583, ET AL.
PARCEL ALLOCATIONS

Parcel 2 - Denied

Parcels 10 & 13 - Requests Withdrawn

Johnson Utilities - (Wastewater Only)

Parcels 14, 15, 16, 17, 18, 19, 20 and 22

Johnson Utilities - (Water & Wastewater)

Parcels 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23

H2O, Inc. - (Water Only)

Parcels 15, 16, 17, 18 and 22

That portion of Parcel 14 not previously certificated to H2O

All of Section 13, Township 2 South, Range 7 East, in Maricopa County, Arizona

TRANSFER Country Thunder (the western one-third of Section 30, Township 2 South, Range 8 East, Pinal County, Arizona

Diversified - (Water Only)

Parcel 24

Queen Creek - (Water Only)

TRANSFER of Country Thunder from H2O (see above description)

Eastern three-fourths of Section 14, Township 2 South, Range 7 East, Maricopa County, Arizona

Deleted

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

OCT 04 2001

DOCKETED BY *JM*

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF THE APPLICATION OF
H₂O, INC., FOR AN EXTENSION OF ITS
7 EXISTING CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-02234A-00-0371

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

DOCKET NO. WS-02987A-99-0583

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

DOCKET NO. WS-02987A-00-0618

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

DOCKET NO. W-02859A-00-0774

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

DOCKET NO. W-01395A-00-0784

DECISION NO. 64062

AMENDS DECISION NO. 63960
OPINION AND ORDER

22 DATES OF PRE-HEARING CONFERENCES: October 11, 2000 and March 11, 2001

23 DATES OF HEARING: March 15, 16, 19, 20, and 21, 2001

24 PLACE OF HEARING: Phoenix, Arizona

25 PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern

26 APPEARANCES: Fennemore Craig, P.C. by Mr. Jay L. Shapiro
27 and Ms. Karen Errant, on behalf of H₂O, Inc.;
28

1 Lewis and Roca, L.L.P., by Mr. Thomas H.
2 Campbell and Mr. Michael L. Denby, on behalf
of Johnson Utilities Company;

3 Martinez & Curtis, P.C. by Mr. William P.
4 Sullivan, on behalf of Diversified Water
Utilities, Inc.;

5 Jorden and Bischoff, P.L.C., by Mr. Charles L.
6 Bischoff and Ms. Jenny J. Clevenger, on behalf
of Queen Creek Water Company; and

7 Ms. Teena Wolfe, Staff Attorney, Legal
8 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

9 **BY THE COMMISSION:**

10 On October 18, 1999, Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC") filed
11 with the Arizona Corporation Commission ("Commission") an application for an extension of its
12 Certificate of Convenience and Necessity ("Certificate") to provide water and wastewater services in
13 various parts of Pinal County, Arizona, in Docket No. WS-02987A-99-0583 ("583 Docket").

14 On November 1, 1999, JUC filed an amendment to its application in the 583 Docket.

15 On May 30, 2000, H₂O, Inc. ("H₂O") filed an application for an extension of its Certificate.

16 On June 15, 2000, JUC filed what was captioned its Second Amended Application which
17 revised its requested expansion area.

18 On July 5, 2000, JUC filed what was captioned its Third Amended Application which again
19 revised its requested expansion area because of additional requests for service from other property
20 owners.

21 On August 21, 2000, Pantano Development Limited Partnership ("Pantano") requested and
22 was subsequently granted intervention in the proceeding.

23 On August 23, 2000, by Procedural Order, the Commission consolidated the JUC application
24 as amended and the H₂O application for purposes of hearing on the contested portions of the above-
25 referenced applications. However, the Commission further ordered the bifurcation of JUC's
26 application regarding uncontested territory for both water and wastewater services into a separate
27 proceeding which was assigned Docket No. WS-02987A-00-0618 ("618 Docket").

28 On August 25, 2000, JUC filed what was captioned its Fourth Amended Application due to

1 additional requests for water and wastewater service.

2 On August 30, 2000, at the request of the Commission's Utilities Division ("Staff"), JUC and
3 H₂O, a teleconference was held. At that time, scheduling issues were resolved for the various filings
4 related to the proceedings.

5 A hearing was scheduled on the applications of JUC and H₂O to commence on October 19,
6 2000.

7 On September 29, 2000, five property owners who own approximately 500 acres of land
8 encompassed within JUC's 583 Docket requested intervention on behalf of a development to be
9 known as Skyline Ranch ("Skyline").

10 On October 2, 2000, Diversified Water Utilities, Inc. ("Diversified") filed a Motion to
11 Intervene, Motion in Opposition to Applications and to Continue Hearings, and Notice of Intent to
12 Present Testimony and Request for Waiver with respect to the JUC and H₂O applications pending
13 before the Commission. Diversified also filed an application for an extension of its Certificate in
14 Docket No. W-02859A-00-0774, stating that JUC's and H₂O's applications for the extension of their
15 Certificates to provide water service impact areas that are either within, contiguous to, or in the
16 vicinity of areas certificated to Diversified.

17 On October 4, 2000, Queen Creek Water Company ("Queen Creek") filed an application to
18 intervene in the JUC/H₂O proceeding and also filed an application for an extension of its Certificate
19 stating that JUC's and H₂O's applications to extend their Certificates to provide water service were in
20 areas either contiguous to or in the vicinity of the areas previously certificated to Queen Creek.

21 On October 4 and 10, 2000, respectively, Staff filed a memorandum in support of both
22 Diversified's and Queen Creek's applications to intervene in the JUC and H₂O proceedings.

23 On October 11, 2000, a teleconference was held in which JUC, H₂O, Diversified, Queen
24 Creek and Staff participated. Discussions took place concerning the issues raised by JUC's and
25 H₂O's applications along with the pending requests for intervention by Diversified and Queen Creek
26 along with their applications and their impact on the proceedings scheduled for hearing on October
27 19, 2000. Staff was also concerned with respect to the various issues and potential conflicts between
28 the pending applications. It was determined that the hearing should be continued for a period of time.

11/2/00

1 to allow all parties to prepare for a hearing on the issues. This delay in the hearing date resulted in a
2 suspension of the time-frame rules, due to the unusual circumstances of the competing applications in
3 the respective Dockets.

4 On October 16, 2000, the Commission, by Procedural Order, consolidated the above-
5 captioned Dockets for purposes of hearing. The hearing previously scheduled for October 19, 2000
6 on the applications filed by H₂O and JUC was continued until March 15, 2001 with the applications
7 of Diversified and Queen Creek consolidated into the proceedings. October 19, 2000 was reserved
8 for taking public comment as that date had been previously noticed for hearing by H₂O and JUC.
9 The Commission further ordered that the pre-hearing conference scheduled for October 16, 2000, be
10 continued until March 12, 2001. Skyline was also granted intervention.

11 On October 19, 2000, the above-captioned proceeding was convened to take public comment.
12 The parties and Staff were present with counsel. Although no intervenors entered an appearance at
13 that time, a number of property owners for the areas involved in the respective applications were
14 present and made public comment.

15 On December 14, 2000, Southwest Properties, Inc. ("SPI") and Vistoso Partners, L.L.C.
16 ("Vistoso") requested and were subsequently granted intervention in the above-captioned proceeding.

17 On January 9, 2001, Staff filed its report with respect to the above-captioned applications.

18 On January 2, 2001, JUC filed a Request for Pre-Hearing Conference to review certain issues
19 which had arisen with respect to the above-captioned proceeding.

20 On January 5, 2001, by Procedural Order, the Commission scheduled a pre-hearing
21 conference on January 11, 2001.

22 On January 11, 2001, at the pre-hearing conference, a discussion took place involving a
23 possible settlement between JUC, H₂O and Queen Creek without the inclusion of Diversified.
24 However, it was pointed out that Pinal County was taking an active part in attempting to resolve the
25 competing applications of the parties and was also involved in the possible formation of a domestic
26 improvement district that was proposed to be formed in Diversified's certificated service area. The
27 parties also conducted discussions concerning possible changes in the filing dates of testimony
28 previously ordered, given that the testimony might be affected by the filing of any proposed

1 settlement.

2 On January 24, 2001, JUC, H₂O and Queen Creek (collectively "HJQ") filed what was
3 captioned "Notice of Filing Settlement Agreement and Joint Application for Approval Thereof"
4 ("Settlement Agreement"). HJQ indicated that they had reached a settlement of a number of issues
5 which had previously been contested. HJQ also represented that certain land owners and customers
6 who were served by Diversified had filed a petition with Pinal County requesting that the County
7 Board of Supervisors ("Pinal County Board") authorize the formation of a domestic water
8 improvement district "that will condemn, purchase or otherwise acquire the water utility facilities of
9 Diversified and become the water provider in what is now Diversified's certificated service area."
10 HJQ believed that, if the Pinal County Board approved the formation of the district that would
11 encompass Diversified's active service area, its application herein would be rendered moot.¹

12 On January 29, 2001, by Procedural Order, the Commission established the procedures to be
13 followed for the filing of any testimony and associated exhibits with respect to the scheduled hearing.
14 The Commission's Procedural Order also set forth the filing schedule for any responses or replies
15 with respect to the Settlement Agreement filed by HJQ. Subsequently, Diversified, Skyline and Staff
16 objected to the Settlement Agreement between HJQ.

17 On February 26, 2001, Arizona Utilities Supply & Services, L.L.C. ("AUSS") filed an
18 application to intervene in the above-captioned proceeding. AUSS indicated that it had received
19 requests from certain landowners or developers of properties which were involved in this proceeding.
20 AUSS indicated that it anticipated filing on or about March 1, 2001, an application for a Certificate to
21 provide sewer service to an area which is part of the pending proceeding involving JUC.

22 On March 5, 2001, JUC, H₂O and Queen Creek jointly filed an objection to the request by
23 AUSS to intervene. They argued that the application of AUSS was filed more than two months after
24 the deadline of December 15, 2000 set for filing requests for intervention in this proceeding.
25 Subsequently, on March 8, 2001, by Procedural Order, the application for intervention by AUSS was
26

27 ¹ According to HJQ, only five of Diversified's nine certificated sections of land are presently able to be served by
28 Diversified. The remaining four sections are not served and are owned by the State of Arizona which cannot petition the
County to form an improvement district. HJQ cited A.R.S. § 48-902 and Attorney General Opinion 71-33 in support of
this argument.

1 denied.

2 On March 12, 2001, the final pre-hearing conference was held. During this pre-hearing
3 conference, Skyline withdrew its objection to the Settlement Agreement, and the parties also
4 discussed the presentation of evidence during the proceeding.

5 On March 15, 2001, a full public hearing was commenced before a duly authorized
6 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. JUC, H₂O,
7 Diversified, Queen Creek and Staff appeared with counsel. No intervenors appeared, but public
8 comment was taken and additional hearings were conducted on March 16, 19, 20 and 21, 2001.
9 Testimony was taken from utility witnesses, property owners, the Pinal County Manager and Staff.
10 Numerous exhibits were admitted into evidence during the course of the proceeding. Following the
11 conclusion of the hearing, the matter was taken under advisement pending submission of a
12 Recommended Opinion and Order to the Commission.

13 * * * * *

14 Having considered the entire record herein and being fully advised in the premises, the
15 Commission finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. Pursuant to authority granted by the Commission, JUC is certificated to provide water
18 and wastewater service to approximately 650 customers in an area of approximately forty-five square
19 miles southeast of Queen Creek in various parts of Pinal County, Arizona.

20 2. Pursuant to authority granted by the Commission, H₂O is certificated to provide public
21 water service to approximately 783 customers located in approximately 13 ½ sections of Pinal and
22 Maricopa Counties, Arizona.

23 3. Pursuant to authority granted by the Commission, Diversified is certificated to provide
24 public water service to approximately 140 customers in various parties of Pinal County, Arizona.

25 4. Pursuant to authority granted by the Commission, Queen Creek is certificated to
26 provide public water service to approximately 1,977 customers in various parts of southeast Maricopa
27 and northwest Pinal Counties, near the town of Queen Creek, Arizona.

28 5. On October 18, 1999, JUC filed an application for an extension of its Certificate to

1 provide water and wastewater service in various parts of Pinal County, Arizona. Subsequently, on
2 November 1, 1999, June 15, July 5 and August 25, 2000, JUC filed amendments to its application.
3 JUC is seeking an extension of its Certificate to include an area of approximately 26 and ½ square
4 miles which is more fully described in Exhibit A attached hereto and incorporated by reference in the
5 form of a designated parcel list.²

6 6. With its application, JUC is seeking to provide water and wastewater service to all 24
7 parcels with the exception of parcel 19, for which JUC seeks to provide wastewater service only, and
8 to delete parcels 14 and 20 from H₂O's certificated service area in order for JUC to provide both
9 water and wastewater to both parcels.

10 7. On May 30, 2000, H₂O filed an application for an extension of its existing Certificate
11 to provide water service to four contiguous sections of land reflected on Exhibit A as parcels 5, 6, 11,
12 14, 15, 16, 17, 18, and 22 which compromise approximately an additional 2,055 acres.

13 8. On October 2, 2000, Diversified filed an application for an extension of its existing
14 Certificate to provide public water utility service to approximately nine sections of land in various
15 parts of Pinal County, Arizona described as parcels 2, 14, 15, 16, 17 and 18 on Exhibit A. On
16 October 3 and November 2, 2000, Diversified filed amendments to its application to add additional
17 portions of parcel 14 and also added parcel 24 in order to provide service to a land owner who is
18 requesting water service from Diversified for approximately 20 acres of land.

19 9. On October 4, 2000, Queen Creek filed an application for an extension of its existing
20 Certificate to provide public water utility service for approximately four more sections of land
21 described as part of parcel 11, and parcels 15, 16, 17, 18 and 22 as set forth on Exhibit A. H₂O and
22 JUC are also requesting to serve that part of parcel 11 requested by Queen Creek, along with parcels
23 15, 16, 17, 18 and 22.

24 10. Notice of the above-captioned applications was given in the manner prescribed by law.

25 11. At the outset of the hearing, counsel for the parties to the Settlement Agreement
26 announced that they were withdrawing it from consideration before the Commission because
27

28 ² The parcel list was designed by Staff as a convenient way to reference the various requested extensions.

1 Diversified was not a party to the Agreement.

2 THE JOHNSON APPLICATION

3 12. In support of its application, JUC called the following witnesses to testify on its
4 behalf: Mr. Stanley Griffis, Ph.D., the Pinal County manager; Ms. Kathy Aleman, a principal with
5 SPI, a developer; Mr. Gerald Bowen, a principal with Bowen Properties, Inc.; Mr. Byron Handy,
6 president of BFH Development Corporation; Mr. Brian Tompsett, a civil engineer with WLB Group
7 which is the primary engineering consultant for JUC; and Mr. George Johnson, the managing
8 member of JUC.

9 13. During the public comment portion of the proceeding, it was indicated that Mr. Griffis
10 would testify on behalf of H₂O and JUC.

11 14. Mr. Griffis testified that he was making his recommendation on behalf of Pinal
12 County with respect to the applications of JUC, H₂O and Queen Creek as was resolved in the
13 Settlement Agreement filed by these three utilities on January 24, 2001.

14 15. Mr. Griffis indicated that he was instrumental in bringing together H₂O, JUC and
15 Queen Creek after they had been unable to reach an agreement with Diversified over the contested
16 areas occasioned by the competing applications.

17 16. According to Mr. Griffis, he had been contacted by several large landowners within
18 Diversified's certificated service area requesting help from the county in their dealings with
19 Diversified involving the use of their properties. These contacts came in approximately December,
20 2000.

21 17. In response to their concerns, Mr. Griffis had discussions with other Pinal County
22 officials and learned that a majority of the land owners within Diversified's certificated service area
23 "could petition Pinal County to form a water improvement district that could then seek to purchase,
24 condemn or otherwise acquire Diversified's facilities and become the authorized provider of water
25 utility service within that area."
26
27
28

1 18. Based on these discussions, Mr. Griffis believed that the Pinal County Board would
2 support the formation of such a district due to the concerns of property owners within Diversified's
3 certificated service area.

4 19. Mr. Griffis further testified that Pinal County is concerned that growth, which is
5 occurring rapidly, move in an orderly fashion to enhance the quality of life of its citizens by having
6 adequate water and wastewater utility services.

7 20. Pinal County is not interested in seeing excessive litigation delay the development of
8 growth within the respective areas sought to be certificated herein.

9 21. Pinal County wishes to have a prompt resolution of the disputes arising from the
10 competing applications herein because it anticipates significant revenue growth associated with
11 development.

12 22. According to Mr. Griffis, if Diversified is removed from the process of competing for
13 extensions of its certificated service area due to the formation of the district, JUC, H₂O and Queen
14 Creek indicated that they could resolve the issues brought about by their competing applications and
15 agree on a means of allocating extensions of service within the areas contested by the utilities.

16 23. Mr. Griffis believes that the crucial factor of the proposed settlement was the
17 agreement of Pinal County to support the formation of the Skyline Water Improvement District
18 ("Skyline District"). Mr. Griffis further testified that the District was not formed to harm Diversified
19 since it would receive adequate compensation, if need be, through litigation.

20 24. Mr. Griffis identified Resolution No. 031401-SDWID which was captioned "a
21 resolution of the Pinal County Board of Supervisors establishing the Skyline Domestic Water
22 Improvement District" that was approved on March 14, 2001 (the day before the hearing). He
23 identified large portions of the district included in parcel 2 and parcel 16 as delineated on Exhibit A
24 and pointed out that it also included significant portions of Diversified's certificated service area.

25 25. Although Mr. Griffis testified during the proceeding that he had received a number of
26 complaints about Diversified's service, during his deposition on November 28, 2000, he stated that he
27 was unaware of any complaints about service by Diversified.
28

1 26. Subsequently, Mr. Griffis' acknowledged that he had received mostly calls from
2 property owners within Diversified's certificated service area and not actual customers who received
3 service from Diversified.

4 27. With respect to Diversified's existing Certificate, Mr. Griffis described the Skyline
5 District as being composed of three separate and distinct parcels of land which are not contiguous to
6 one another and include sizeable portions of Diversified's certified area.

7 28. In concluding his testimony, Mr. Griffis indicated that he was satisfied that H₂O could
8 provide water service to parcel 15 (Pecan Ranch), parcel 16 (Home Place), and parcel 17 (Ware
9 Farms) as originally agreed upon in the proposed settlement, and that parcel 11 (Circle Cross Ranch)
10 could be provided with service by JUC.

11 29. Ms. Aleman testified that her company, SPI, is in the process of co-developing parcel
12 2, Bella Vista Farms ("Bella Vista"), an area which lies partially in Diversified's existing certificated
13 area and also outside of its certificated area, but contiguous to Diversified's southern boundary. Bella
14 Vista lies to the east of JUC's certificated area. She stated that SPI supports JUC's application and
15 the former proposed Settlement Agreement between JUC, H₂O and Queen Creek.

16 30. That portion of Bella Vista which lies within Diversified's certificated service area is
17 part of the Skyline District as is the remainder of the Bella Vista project which lies outside of
18 Diversified's certificated area.

19 31. Ms. Aleman testified that although no development has yet taken place in the Bella
20 Vista area, it is to be a master planned development completed "hopefully within the next three years
21 or so". The development consists of 3,800 acres which is controlled by SPI and other developers
22 who plan to build between 12,000 and 13,000 homes there.

23 32. Ms. Aleman testified that SPI preferred to keep its options open with respect to the
24 formation of the Skyline District for the provision of water service within Diversified's area and
25 favored JUC because, in her opinion, JUC is more qualified and able to provide water and wastewater
26 service, both physically and financially, to the Bella Vista area.

27 33. Mr. Bowen described his plans for approximately 200 acres in parcel 8, as delineated
28 on Exhibit A, where his company plans to build 127 homes after approval for his subdivision is

1 received from the Arizona Department of Real Estate. Approval of the Real Estate Department will
2 follow if JUC is approved as a provider of water and sewer service, because JUC has a designation of
3 an assured water supply.

4 34. There are no other water or wastewater providers in the vicinity of parcel 8 where Mr.
5 Bowen's property is located.

6 35. Mr. Handy testified that the developers he is assisting in the development of the 480
7 acres in parcel 17 (Ware Farms) are in agreement with the resolution reached in the Settlement
8 Agreement between JUC, H₂O and Queen Creek. They are desirous of H₂O being certificated to
9 provide water service in parcel 17 and that JUC be certificated to provide waste water treatment
10 service in parcel 17 for approximately 1,500 residential lots.

11 36. Mr. Handy expressed some reservations about the possibility of service from
12 Diversified and has heard that a water improvement district was being formed to provide service to
13 that area.

14 37. Mr. Handy further testified in support of JUC's application for parcel 1 because Mr.
15 Handy has a client, Arizona Farms, which has engaged him to market a 2,850 acre master planned
16 community to home builders who will require the availability of water and waste water service.

17 38. However, Mr. Handy indicated that development of parcel 1 in the Arizona Farms area
18 was "probably about 3 years away" and that sales of the property to homebuilders would then take
19 place.

20 39. Mr. Tompsett, the vice-president and director of operations for JUC's primary
21 engineering consultant, testified that Staff failed to consider JUC's construction schedule for the
22 development of two 600 gallons per minute wells that will almost triple JUC's capacity and
23 significantly increase JUC's storage, production and distribution capacity in the next few years.

24 40. Mr. Tompsett emphasized that JUC has a Designation of an Assured Water Supply
25 ("Designation") which will enable property owners who wish to be served with water service by JUC
26
27
28

1 to receive the necessary regulatory approvals for their projects more easily because of the
2 Designation³.

3 41. With respect to a tariff issue that had arisen from the fact that JUC had been charging
4 waste water rates from developers based on water meter sizes when the water meter was installed,
5 even if no waste was being generated, Mr. Tompsett recommended that the tariff be amended so that
6 the waste water rate would be charged at a flat rate and not based on meter size when it was installed.
7 This is contrary to Staff's position that waste water rates should not become effective until waste
8 water is first produced.

9 42. Mr. Tompsett opined that JUC is better situated to provide service to the Bella Vista
10 Farms area than Diversified because of its stronger financial position and because of the scale of
11 JUC's infrastructure improvements that Diversified cannot achieve.

12 43. With respect to parcel 1 sought by JUC to be certificated herein, Mr. Tompsett
13 testified that JUC is currently certificated to provide service to an area immediately to the south and
14 to the west of parcel 1. This area contains a subdivision, Wild Horse Estates, that is currently being
15 built, and where a well has been drilled, water lines have been installed and the developer is
16 preparing to pave streets within the development.

17 44. Mr. Tompsett described JUC's plans for Bella Vista explaining that JUC would loop
18 the entire system from a main which it would run on Bella Vista Road.

19 45. During cross-examination, Mr. Tompsett acknowledged that JUC's three operating
20 water systems, the Johnson Ranch system, the Sun Valley Unit 5 system, and the Wild Horse Ranch
21 system, are not interconnected.

22 46. Mr. Johnson testified that JUC now is in compliance with the requirements of the
23 Arizona Department of Environment Quality ("ADEQ") which had previously cited JUC for repeated
24 compliance violations.

25 47. Mr. Johnson pointed out that after the issuance of a Procedural Order on March 8,
26 2001, JUC had fulfilled the requirements of Decision No. 62087 (November 19, 1999) in which the
27

28 ³ JUC's current Designation is 5,967 acre feet of water per year.

1 several discussions with Mr. Griffis about general questions concerning the formation of a water
2 improvement district.

3 53. Mr. Johnson made no attempt to deny the fact that JUC had received a number of
4 complaints in the past, but stated that his utility is attempting to operate in a lawful manner and that a
5 number of the problems had been due to construction accidents when contractors cut JUC's water or
6 sewer lines.

7 54. Mr. Johnson also described JUC's plans for expansion for the provision of wastewater
8 treatment service to parcel 22, which lies north of the Union Pacific Railroad Company's tracks and
9 parcel 11.

10 55. With respect to a recent problem with its waste water tariff, Mr. Johnson believes that
11 the matter will be resolved in the near future; however, JUC will file a tariff which conforms to
12 Arizona law and the Commission's rules in the near future.

13 THE H₂O APPLICATION

14 56. H₂O, in support of its application, called the following witnesses: Mr. Donald
15 Schnepf, a 50 percent shareholder of H₂O and its president since October 5, 1972, and Mr. Richard
16 Bartholomew, H₂O's consulting engineer for the past two years.

17 57. Mr. Schnepf testified that H₂O had originally applied for an extension of its Certificate
18 to provide public water service in parcels 5, 6, 11, 14, 15, 16, 17, 18, 20, and 22 as delineated in
19 Exhibit A.

20 58. Pursuant to the terms of the Settlement Agreement, H₂O's Certificate would have been
21 extended to include that portion of parcel 14 not currently located within H₂O's existing Certificate
22 and parcels 15, 16, 17, 18 and 22 in Pinal County, Arizona, as delineated in Exhibit A. H₂O is also
23 requesting that its Certificate be extended to include Section 13, Range 7 East, Township 2 South, in
24 Maricopa County. H₂O is still desirous of providing water service to these areas.

25 59. H₂O is also requesting that the Country Thunder property, which lies south of the
26 Queen Creek Wash and is comprised of approximately the western 1/3 of Section 30, Range 8 East,
27 Township 2 South, in Pinal County, Arizona, be deleted from H₂O's Certificate since Queen Creek
28

1 actually provides water service to that parcel and is requesting the area be transferred to Queen
2 Creek.

3 60. Mr. Schnepf testified that, after he was contacted by Mr. Griffis, he learned that Pinal
4 County's Board had received a petition from landowners in Diversified's certificated service area
5 requesting that a water improvement district be created to replace Diversified as their water service
6 provider.

7 61. H₂O agreed to support the Settlement Agreement proposed by Pinal County in order to
8 reach an expeditious resolution of the competing applications and to avoid further problems.

9 62. H₂O is anxious for a prompt resolution of the dispute between the parties because of
10 its need to expand its system to ensure quality service at reasonable rates, and to meet Pinal County's,
11 the landowners' and developers' needs in order to promote orderly development.

12 63. Mr. Schnepf does not believe that it is in the public interest for Diversified to receive
13 an extension of its Certificate at this time based upon his review of a petition involved in the
14 formation of the Skyline District and because Diversified's existing facilities are not adequate to
15 serve any additional areas.⁴

16 64. H₂O's primary concern, with respect to the Staff Report issued on January 9, 2001, is
17 that approval of H₂O's application should be conditioned upon a variety of factors being satisfied and
18 that if they are not, the recommended conditional Certificate would be rendered null and void without
19 further order of the Commission. H₂O believes that Staff's approach is arbitrary and potentially
20 damaging to a landowner currently planning to commence development in approximately two years.

21 65. H₂O also takes exception to the proposed review process by Staff (as discussed
22 hereinafter) because H₂O would not be provided an opportunity to respond to Staff's
23 recommendation and this could result in problems with the extension of service into the new areas
24 approved for service in this proceeding.

25 66. According to Mr. Schnepf, H₂O has planned for the expansion of its system by
26 developing a "Master Plan" which Mr. Schnepf described as having been developed to serve the

27 _____
28 ⁴ Diversified presently has only one well, a pressure tank and an old 20,000 storage tank. It was completing the
construction of a 200,000 gallon storage tank during the hearing.

1 contested areas in these proceedings and by the fact that H₂O supported the Settlement Agreement
2 before it was withdrawn from consideration.

3 67. Mr. Schnepf acknowledged that in 1978, H₂O had filed a Chapter 11 federal
4 bankruptcy reorganization action during his tenure as president.

5 68. Mr. Schnepf acknowledged that, in the past, H₂O had been delinquent in the payment
6 of property taxes prior to 1996 because its irrigation rates were insufficient to cover all of the
7 company's expenses, including its property taxes. Subsequently, H₂O and Pinal County entered into
8 a settlement which called for a one-time payment of a portion of the taxes as satisfaction in full. This
9 payment was made in 1998.

10 69. Currently, H₂O's property taxes are current and have been since August 1998, with
11 sufficient reserves to pay taxes in the future when they are due.

12 70. Mr. Schnepf reiterated that H₂O, is seeking an extension of its Certificate for a portion
13 of parcel 14, and parcels 15, 16, 17, 18, and 22 as delineated on Exhibit A and located north and east
14 of the Union Pacific's railroad tracks.

15 71. Mr. Schnepf testified that Mr. Jim Wales, an individual who is involved in the
16 development of parcel 16 known as Home Place, prefers that H₂O be certificated to provide public
17 water utility service to his development.

18 72. Mr. Schnepf testified in great detail concerning the development of H₂O's Master Plan
19 and the manner in which facilities would be extended to the areas which it sought to be certificated
20 herein, including the development of a new production well that can produce 2,500 gallons of water
21 per minute.

22 73. Mr. Schnepf indicated that, during the settlement negotiations with JUC and Queen
23 Creek, "H₂O decided to relinquish some area to Queen Creek and to Johnson" with respect to areas
24 that had previously been contested in this proceeding.

25 74. While testifying, Mr. Schnepf explained that JUC had relinquished claims to provide
26 water for parcels 22, 14, 17, 18, 16, and 15.

27 75. Mr. Schnepf further testified that H₂O's Master Plan amply provides for the extension
28 of service to parcel 15 (Pecan Ranch), parcel 16 (Home Place), and parcel 17 (Ware Farms). 7

1 76. Mr. Schnepf believes that parcel 15 (Pecan Ranch) alone, if added to H₂O's system,
2 would add at least 3,000 more residential lots to H₂O's customer base. Additionally, he indicated that
3 the other parcels which H₂O is seeking to be certificated would add additional thousands of
4 customers.

5 77. Much of the requested extension area for parcel 16 (Home Place), will also be lost to
6 planned expansion by H₂O since it is also included within the Skyline District.

7 78. However, even in light of the fact that parcel 16, Home Place, has been included in the
8 Skyline District, H₂O believes that it is possible for the Commission to approve an extension of its
9 Certificate for that area.

10 79. All told, H₂O would ultimately realize approximately 8,100 additional customers from
11 the disputed parcels if the Commission authorizes an extension of H₂O's Certificate for the
12 uncertificated portion of parcel 14 and parcels 15, 16, 17, 18, and 22.

13 80. Mr. Schnepf indicated that he had also reached an understanding with JUC for it to
14 provide wastewater treatment service to all areas where H₂O is certificated for water service, subject
15 to Commission approval.

16 81. Like JUC, Mr. Schnepf acknowledged that H₂O has Commission-approved hook-up
17 fees to pay for much of its backbone plant.

18 82. H₂O's engineer, Mr. Richard Bartholomew, testified that in his opinion, Diversified
19 lacks adequate storage facilities to serve its current customers plus the proposed developments
20 planned in parcels 16 (Home Place) and parcel 17 (Ware Farms). He also testified that Diversified's
21 recent expansions with 6 inch mains would be inadequate to serve areas outside of Diversified's
22 existing certificated service area because of the distance from Diversified's well and storage facilities
23 to the location of the prospective customers.

24 83. Mr. Bartholomew also disagreed with Diversified's plans for expansion, stating that
25 transmission lines alone could not solve the service issues and that Diversified would need wells,
26 storage reservoirs and pump stations to provide the facilities necessary for future customers in the
27 areas sought to be certificated herein.
28

1 84. Mr. Bartholomew discussed in great detail his description of H₂O's Master Plan for
2 expanding its certificated service area, illustrating that the plan had been well thought out and would
3 be constructed with the approval of ADEQ.

4 THE DIVERSIFIED APPLICATION

5 85. In support of its case, Diversified called the following witnesses: Mr. Scott Gray, its
6 president; Mr. James Wright, Diversified's certified operator; and Mr. Greg Potter, an engineer
7 employed by Sunrise Engineering, Inc. that has been performing engineering services for Diversified
8 for several years.

9 86. In 1994, Mr. Gray acquired what was then known as Quail Hollow Water Company, a
10 troubled utility that was providing poor service in what was then a rural area. He did so because he
11 believed that the area bordered on the edge of future growth in the greater Phoenix metropolitan area
12 and because Diversified "was a good prospect for being economically viable and a profitable
13 venture."

14 87. Mr. Gray has previous experience in the water and wastewater business dating back to
15 the early 1980's when he and his wife acquired Oak Creek Utility Corporation, a small water and
16 wastewater utility in the area of Oak Creek Canyon, near Sedona, Arizona.

17 88. Although Mr. Gray is a practicing attorney, he has been certified as a Grade One
18 operator for water and wastewater systems for approximately three years.

19 89. When Diversified acquired the water utility from its former owners in 1995, the
20 system was under an ADEQ cease and desist order which had been issued for numerous violations
21 and inadequacies; however, the former owners were taking no action to cure the deficiencies.

22 90. Diversified's system at that time had approximately 25 customers who were served by
23 a single 50 gallons per minute well, a 5,000 gallon pressure tank and a single four-inch distribution
24 line approximately one mile long.

25 91. Diversified refurbished and made substantial improvements to its system by adding a
26 20,000 gallon storage following its acquisition of the utility. Diversified also added new electrical
27 panels, two booster motors, a pressurization system to pressurize the hydro-mantic tank and system, a
28 new pump and a chlorination treatment system.

1 92. By the time Diversified remedied the majority of its deficiencies in 1997, it had grown
2 to 170 customers.

3 93. Diversified is taking the following steps to increase its storage and production
4 capacity: attempting to purchase a 1,000 gallons per minute well within its certificated area; securing
5 ADEQ approval to construct a 250,000 gallon storage tank; and applying for a water infrastructure
6 authority ("WIFA) loan in the amount of \$378,000 to fund the aforementioned projects.⁵

7 94. Mr. Gray indicated that it has always been Diversified's intent to expand its
8 certificated service area beyond its existing 9 ½ sections of land. When Mr. Gray became aware in
9 September, 2000 of JUC's and H₂O's competing applications for areas contiguous to Diversified's
10 service area, Diversified filed for intervention in the proceedings and also filed a competing
11 application contesting those certain areas sought by JUC and H₂O.

12 95. In pre-filed testimony, Mr. Gray indicated that he disagreed with a number of Staff's
13 recommendations with respect to which utilities in competing areas should be approved to provide
14 utility services. He argued that Queen Creek already has more than 2,000 metered customers and has
15 a certificated service area encompassing approximately 31 square miles, JUC already covers
16 approximately 45 square miles and anticipates approximately 40,000 total residential metered
17 customers in those areas, and that H₂O, while it is only certificated to provide service to 13 ½
18 sections of land, is experiencing substantial customer growth.

19 96. According to Mr. Gray, Diversified would be "substantially benefited" if the
20 Commission approves the extension of its Certificate for parcel 16 (Home Place), parcel 17 (Ware
21 Farms), and parcel 2 (Bella Vista). Mr. Gray represented that the Home Place development
22 represents a potential for an additional 2,174 metered customers, Ware Farms represents a potential
23 for an additional 1,485 metered customers and Bella Vista represents a potential for an additional
24 12,800 metered customers.

25
26
27 ⁵ Diversified has instituted a complaint against JUC in a separate proceeding, Docket Nos. W-02234A-00-0775;
28 WS-02987A-00-0775 and WS-02987A-00-0775 in which it alleges that JUC has interfered with Diversified's attempts to
purchase the well within its certificated area and is attempting to "foster dissatisfaction among landowners and
customers" of Diversified.

1.4060

1 97. Mr. Gray pointed out that if the Commission authorizes the extension of Diversified'
2 Certificate for the parcels which include Ware Farms and Home Place, Diversified will be able t
3 loop its system and operate more efficiently. Mr. Gray also pointed out that Diversified's servic
4 lines are within 4,000 feet of the Ware Farms development and within 50 feet of the Bella Vist
5 project.

6 98. Additionally, approximately one and one-half sections of the Bella Vista developmer
7 are already within Diversified's certificated service area and, if the Commission approves th
8 addition to Diversified's Certificate of parcel 2, it would represent a natural growth area fo
9 Diversified because a single service provider will provide consistency and efficiency.⁶

10 99. Diversified's small certificated service area has caused Mr. Gray to be concerned wit
11 the inability to expand in a substantial portion of its certificated area because four sections of a tot
12 of nine and one-half sections are owned by the State. A further area of concern is the fact that
13 Diversified's Certificate is not extended, it will have less of an opportunity to obtain existin
14 irrigation wells which could be converted to potable use.

15 100. Diversified does not object to JUC offering sewer utility service within its certificate
16 service area.

17 101. In his pre-filed testimony, Mr. Gray, like the other utility owners, strongly disagree
18 with Staff's proposal of a conditional Certificate being issued for its requested extension areas whic
19 could be revoked by means of an automatic revocation if development and/or facilities were n
20 installed within two years of the effective date of the Decision herein.

21 102. In rejoinder, Mr. Gray pointed out that a number of Diversified's customers attended
22 public hearing in connection with the formation of the Skyline District and expressed the
23 satisfaction with the service that was provided by Diversified. Mr. Gray cited comments b
24 individuals who spoke at the public hearing evidencing the improvement in service which the
25 received from Mr. Gray and Diversified after he acquired the water utility in 1995.

26
27
28 ⁶ It should be noted, however, that the entire Bella Vista project, including those areas already certificated
Diversified, are within the recently formed Skyline District.

64060

1 103. Mr. Gray testified that at the hearing regarding the Skyline District on February 28,
2 2001, Mr. Johnson was present and made statements to the Pinal County Board "that his trust would
3 buy all bonds the District needed to issue and would look for their repayments from revenues from
4 the water used and paid in the District."

5 104. Mr. Gray believes that JUC, assisted by Mr. Griffis, is involved in a concerted effort to
6 harm Diversified.

7 105. Mr. Gray also testified that Diversified was not invited to discuss any of the alleged
8 concerns raised by landowners within Diversified's certificated service area or their desire to form an
9 improvement district. Additionally, Diversified was not notified or invited to attend any of the
10 settlement discussions conducted by Mr. Griffis with JUC, H₂O or Queen Creek.

11 106. Based on the number of dwelling units in projects such as Ware Farms, Home Place
12 and Bella Vista, Mr. Gray calculated that Diversified would receive approximately \$14 million due to
13 its \$850 per connection charge if Diversified was certificated to provide service to those areas.

14 107. Much of the area sought to be certificated by Diversified herein is located in the
15 vicinity of parcels that were previously subject to lot splitting; however, based on the evidence, the
16 parcels involved in the instant applications are presently devoted to farming or are large vacant tracts
17 of land waiting to be developed.

18 108. Commission approval of Diversified's application to provide water service to large
19 areas of land is important to Diversified because, as development takes place, it will be able to loop
20 its system and develop backbone plant paid for by the collection of its hook-up fees.

21 109. Mr. Gray testified that Diversified is absolutely and unconditionally ready, willing and
22 able to proceed with the development of facilities to provide service to parcels 2, 16, 17, 18 and 24.

23 110. Mr. Gray argued that the Commission has the authority to approve the extension of
24 Diversified's Certificate to areas included within the Skyline District such as Bella Vista. Pursuant to
25 A.R.S. §48-909(D), a certificated public utility is entitled to be compensated by an improvement
26 district if it has previously constructed facilities which are acquired by the district. However, the
27 right to compensation shall not apply if no facilities of the public utility are actually acquired by the
28

1 improvement district and a Certificate is issued to the corporation for any area which is within an
2 improvement district at the time the Certificate is issued, as would be the case here.

3 111. Mr. Gray acknowledged that outside of parcel 24, the property owners in the
4 remaining parcels for which it is seeking an extension of its Certificate have not requested service
5 from Diversified.

6 112. Mr. Gray also stated that the formation of the Skyline District will be injurious to
7 Diversified because it may limit its opportunities for growth within its existing certificated service
8 area.

9 113. Mr. Gray blames the formation of the Skyline District upon the collusive efforts of
10 JUC, H₂O and Queen Creek entering into the Settlement Agreement and thereby acquiescing to the
11 formation of the district in areas sought to be certificated herein and in various parts of Diversified's
12 certificated service area.

13 114. Mr. Gray alleged that the petition, which had been utilized to request that Pinal
14 County form the Skyline District, contained signatures of Diversified's customers that had been
15 obtained through fraudulent means.

16 115. Diversified's business office is located in Mesa, Arizona, at a company by the name of
17 FaciliGroup with whom it has contracted to provide billing and other services. It was also established
18 that Diversified does not have an on-site manager.

19 116. Based on the record, Diversified has made no definite plans for projected growth
20 because without definite plans from developers, any plans to accommodate the growth would be
21 highly speculative.

22 117. One of the proponents of the Skyline District was involved in a complaint proceeding
23 previously with Diversified before the initiation of the development of the district.

24 118. Mr. Gray acknowledged that there were a number of ways to provide evidence to Staff
25 that development was occurring in the subject parcels such as the following: filing a copy of a
26 Master Plan; submitting drawings of installed plant; filing documentation which establishes water is
27 being sold in the subject parcel; filing evidence that customers of the company are located in a
28 subject parcel; filing evidence that a utility has acquired existing wells or well sites in a subject

1 parcel; submitting evidence of the removal of an unused plant; and submitting evidence of steps
2 taken to bring a new well on line.

3 119. Mr. Gray is unaware of any existing customers of Diversified whose property is
4 located within the boundaries of the newly formed improvement district.

5 120. While Mr. Gray objected to the conditional form of a Certificate being awarded to any
6 of the subject parcels herein, he has not objected to the form of Certificates previously awarded by
7 the Commission in extension proceedings or in certification proceedings which were conditioned
8 upon the utility meeting certain requirements in the past. He is objecting to the requirement of
9 providing evidence that third parties are proceeding with development because the previous
10 Commission Certificates and extensions of Certificates were within the control of the utility and not
11 third parties.

12 121. It was acknowledged that Diversified does not have any existing full-time employees.
13 However, Mr. Gray indicated that, if Diversified is awarded significant extensions of its Certificate
14 resulting in a larger customer base and increased revenues, Diversified, rather than relying on
15 contract employees, will retain and add permanent full-time employees as needed.

16 122. Diversified's certified operator, Mr. Jim Wright, is also employed on a full-time basis
17 by the City of Scottsdale as a Water Maintenance Technician engaged in the operation of Scottsdale's
18 public water system.

19 123. Mr. Wright acknowledged that, while ADEQ has found no major deficiencies with
20 Diversified's current operations, ADEQ had found that Diversified lacked adequate storage with only
21 a 20,000 gallon storage tank. However, when its new 200,000 gallon storage tank (reduced from
22 250,000 gallons) is completed, this problem will be resolved.

23 124. According to Mr. Wright, with Diversified's addition of a new 200,000 gallon storage
24 tank and a 5,000 gallon pressure tank, Diversified will provide a reliable water system for its existing
25 customers and a solid base for future growth.

26 125. During the two years that Mr. Wright has been with Diversified, there have been
27 relatively few service problems. He also indicated that Diversified responds promptly to any
28 problems when they arise.

1 126. Mr. Wright believes that if Diversified's application is approved for the expansion of
2 its system to the Home Place, Ware Farms and Bella Vista parcels, Diversified's system would be
3 "greatly enhanced" because developers would be required to pay Diversified's hook-up fees resulting
4 in funds to allow for additional backbone plant to be constructed and interconnected with the rest of
5 Diversified's system and thereby producing more revenues to produce funds for improvements, and
6 the hiring of more employees to serve its customers.

7 127. According to testing conducted by an independent laboratory, Diversified's nitrate
8 level was extremely low, and unlike H₂O and JUC, Diversified was not required to do quarterly
9 sampling.

10 128. Mr. Wright acknowledged that because of his full-time employment with the City of
11 Scottsdale, he is not always available to handle emergency situations, but that because Mr. Gray is
12 also a certified operator, he too can address customer complaints.

13 129. Because Diversified's system is small, it is currently not looped and Mr. Wright is
14 required to flush Diversified's mains every week and test the chlorine levels to insure water quality.

15 130. At its present size, Diversified lacks the capacity to handle fire flows at the present
16 time.

17 131. Mr. Greg Potter, an engineer whose firm has been working for Diversified for several
18 years, testified that his firm had been retained to insure that Diversified's water system is designed to
19 meet the requirements of ADEQ and the Maricopa Association of Government Standards. Mr. Potter
20 related that lot splitters and small sub-dividers create problems for water companies such as
21 Diversified because they fail to cooperate with the utility to build a quality water system because
22 "they take every cost cutting opportunity available to them."

23 132. Mr. Potter opined that it would be in the public interest for Diversified's existing
24 system to be expanded to serve quality growth areas such as those to the northwest represented by
25 Ware Farms and Home Place and to the south with Bella Vista. He stated that such expansion would
26 enable Diversified to ultimately loop its entire system and give it an opportunity to increase its water
27 production and storage capacity, thereby, benefiting its customers.
28

1 142. According to Mr. Potter, Diversified has sufficient utility plant with which to serve the
2 initial demand of that portion of Bella Vista presently within its certificated service area through a
3 main extension; however, if parcel 2 is approved for Diversified, it will require much more in the way
4 of facilities and backbone plant to provide service.

5
6 THE QUEEN CREEK APPLICATION

7 143. On March 15, 2001, at the outset of the hearing on these proceedings, Queen Creek
8 announced that it was withdrawing from active participation in the hearing itself, but not the outcome
9 of the proceeding. Queen Creek withdrew its testimony and announced a "swap of territory" that had
10 been agreed upon with H₂O.

11 144. The swap evolved from the Settlement Agreement between JUC, H₂O and Queen
12 Creek and, although the proposal for the Commission's approval of the January 2001 Settlement
13 Agreement has been withdrawn, H₂O and Queen Creek have elected to request approval of the swap
14 and for two sections of land contiguous to their existing certificated service areas.

15 145. On February 16, 2001, Queen Creek published notice of the proposed Settlement
16 Agreement and the swap. In response thereto, the Commission has not received any protests of the
17 agreed upon transfer between H₂O and Queen Creek or their request for certification of two
18 contiguous sections of land. In fact, correspondence has been received in support of the requests of
19 H₂O and Queen Creek.

20 146. Queen Creek's and H₂O's proposed trade involves the following: the transfer of the
21 property known as Country Thunder from H₂O to Queen Creek comprised of the western one-third
22 below the Queen Creek wash of Section 30, Township 2 South, Range 8 East; Section 13, Township
23 2 South, Range 7 East would be certificated to H₂O; and the eastern three-fourths comprised of the
24 uncertificated portion of Section 14, Township 2 South, Range 7 East be certificated to Queen
25 Creek.⁷

26
27
28 ⁷ The western quarter of Section 14, Township 2 South, Range 7 East is presently within Queen Creek's
certificated service area.

1 147. JUC has also indicated its willingness to provide wastewater service to the Country
2 Thunder property.

3 STAFF'S RECOMMENDATIONS

4 148. With the filing of the Staff Report on January 9, 2001, Staff recommended approval of
5 various portions of JUC's, H₂O's, Diversified's and Queen Creek's applications herein subject to the
6 Certificates being made conditional upon a number of factors being satisfied by the respective
7 applicants and their continuing to charge their existing rates and charges in their respective extension
8 areas in the respective parcels as further delineated in Exhibit A. Staff also recommended the denial
9 of applications for certain parcels.

10 149. However, due to the ongoing nature of these proceedings, Staff amended a number of
11 its recommendations and, in a post-hearing filing on March 27, 2001, memorialized the amendments
12 which it made during the actual hearing.

13 150. Staff's witness, Mr. Mark DiNunzio, emphasized that he is not convinced that
14 development will take place in a timely manner as previously stated because he believes that there
15 has been a good deal of speculation presented by developers who would be able to capitalize on the
16 increased value of their property if it is included in a utility's Certificate. Therefore, Mr. DiNunzio
17 recommends that any Certificate from this proceeding be granted conditionally and subject to a
18 review after two years to determine the extent of development. As part of the two-year review, Staff
19 would have an additional period of time to review the development, or lack thereof, and file a report
20 either recommending final approval of the Certificate as requested, final approval of the Certificate
21 for the portions of the areas requested where development has taken place with a cancellation of the
22 remaining areas, and/or disapproval of the Certificate for all areas requested if no development has
23 taken place.

24 151. Staff indicates that since 1998, JUC has had 15 complaints, H₂O has had ten
25 complaints, Diversified has had no complaints and Queen Creek has had four complaints.

26 152. With respect to compliance issues, Staff found that JUC, H₂O, Diversified and Queen
27 Creek are current on their property taxes and filings with the Commission and are presently in
28

1 compliance with the rules of ADEQ with the exception of securing various approvals and permits to
2 construct and/or the filing of franchises for the requested parcels herein.

3 JUC

4 153. With respect to JUC's application for the extension of its water and wastewater
5 Certificate, Staff is recommending the following:

- 6 • that JUC's wastewater Certificate be conditionally extended to include parcels
7 2, 14, 15, 16, 17, 18, 19, 20, and 22;
- 8 • that JUC's water and wastewater Certificates be conditionally extended to
9 include parcels 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23;
- 10 • that JUC's application for parcel 1 be denied;
- 11 • that JUC's application with respect to its request to provide service for parcels
12 10 and 13 be withdrawn as requested by JUC;
- 13 • that JUC file a copy for a request for service to parcel 8 within 90 days of the
14 effective date of this Decision;
- 15 • that JUC file with the Commission in this Docket; within two years of the
16 effective date of this Decision, a copy of its franchise from Pinal County for
17 the extension of its Certificate for the areas authorized herein;
- 18 • that JUC file with the Commission in this Docket, within two years of the
19 effective date of this Decision, copies of all Certificates of Approval to
20 Construct ("CAC") and Certificates of Approval of Construction for
21 development in each of the respective approved parcels as authorized
22 hereinafter;
- 23 • that JUC file, within two years of the effective date of this Decision, a request
24 for Certificate review after which, Staff, at its discretion, shall perform a
25 physical plant inspection to determine the extent to which development has
26 commenced.⁸

27 ⁸ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1-4-17

1 After submission of JUC's request for review, Staff shall have 120 days to file a report
2 containing one of the following three recommendations:

- 3
- 4 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 5 ♦ final approval of the Certificate for portions of the parcels approved in this
6 proceeding with the cancellation of the undeveloped portions of the parcels; or
- 7 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

8 154. Staff further recommends that JUC file, within 30 days of the anniversary date of this
9 Decision each year for the next two years, documentation from ADEQ indicating that JUC has been
10 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
11 or failure to correct any major or minor violation within 30 days from the date of notice of violation
12 should result in the Certificate authorized hereinafter becoming null and void without further order of
13 the Commission.

14 155. Staff further recommends that JUC file, within 30 days from the effective date of this
15 Decision, an amended waste water tariff schedule which includes language for its wastewater rates
16 and charges to state that said charges shall not become effective until wastewater first flows into the
17 collection system.

18 156. Staff further recommends that, if JUC fails to meet any of the aforementioned
19 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
20 considered null and void without further order by the Commission.

21 H₂O

22 157. With respect H₂O's application for the extension of its Certificate to provide public
23 water service, Staff is recommending the conditional approval of the application to extend service to
24 that portion of parcel 14 not previously certificated and parcels 15, 16, 17, 18, 22 and Section 13,
25 Township 2 South, Range 7 East in Maricopa County, Arizona.

1 158. Staff further recommends that H₂O file, within two years of the effective date of this
2 Decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") to be issued by
3 the Arizona Department of Water Resources ("ADWR") for the respective parcels and sections.

4 159. Staff further recommends that H₂O file, within two years of the effective date of this
5 Decision, a copy of its CAC to be issued by the ADEQ for the main extension for the Combs School.

6 160. Staff also recommends that H₂O file, within two years from the effective date of this
7 Decision, a copy of its franchise from Pinal County for the extension areas represented by the
8 aforementioned parcels and Section 13.

9 161. Staff is also recommending the following:

- 10 • that H₂O file with the Commission in this Docket within two years of the effective
11 date of this Decision, a copy of its franchise from Pinal County for the extension of its
12 Certificate for the areas authorized hereinafter;
- 13 • that H₂O file with the Commission in this Docket, within two years of the effective
14 date of this Decision, copies of all Certificates of Approval to Construct ("CAC") and
15 Certificates of Approval of Construction for development in each of the respective
16 approved parcels as authorized hereinafter;
- 17 • that H₂O file, within two years of the effective date of this Decision, a request for
18 Certificate review after which, Staff, at its discretion, shall perform a physical plant
inspection to determine the extent to which development has commenced.⁹

19 After submission of H₂O's request for review, Staff shall have 120 days to file a report
20 containing one of the following three recommendations:

- 21 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 22 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
23 with the cancellation of the undeveloped portions of the parcels; or
- 24 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

25
26
27 ⁹ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 162. Staff further recommends that H₂O file, within 30 days of the anniversary date of this
2 Decision each year for the next two years, documentation from ADEQ indicating that H₂O has been
3 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
4 or failure to correct any major or minor violation within 30 days from the date of notice of violation
5 should result in the Certificate authorized hereinafter becoming null and void without further order of
6 the Commission.

7 163. Staff further recommends that, if H₂O fails to meet any of the aforementioned
8 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
9 considered null and void without further order by the Commission.

10
11
12 DIVERSIFIED

13 164. With respect to Diversified's application for an extension of its Certificate, Staff is
14 recommending that the Commission approve the extension of its Certificate to include parcels 2 and
15 24.

16 165. Staff is further recommending that Diversified file, within two years of the effective
17 date of this Decision, the following: the developers' CAWS to be issued by ADWR; copies of its
18 CAC's to be issued by ADEQ; and a copy of its franchise for parcels 2 and 24 which are to be issued
19 by the Pinal County Board.

20 166. Staff is also recommending the following:

- 21
- 22 • that Diversified file with the Commission in this Docket, within two years of the
23 effective date of this Decision, copies of all Certificates of Approval to Construct
24 ("CAC") and Certificates of Approval of Construction for development in each of the
25 respective approved parcels as authorized hereinafter;
 - 26 • that Diversified file, within two years of the effective date of this Decision, a request
27 for Certificate review after which, Staff, at its discretion, shall perform a physical
28 plant inspection to determine the extent to which development has commenced.¹⁰

¹⁰ The Certificate review should include the following data: number of customers in the extended area, amount of plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in

6401 n

1 After submission of Diversified's request for review, Staff file a report containing one of the
2 following three recommendations:

- 3
- 4 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 5 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
6 with the cancellation of the undeveloped portions of the parcels; or
- 7 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

8 167. Staff further recommends that Diversified file, within 30 days of the anniversary date
9 of this Decision each year for the next two years, documentation from ADEQ indicating that
10 Diversified has been in compliance with ADEQ for each year and that failure to submit this
11 documentation in the Docket or failure to correct any major or minor violation within 30 days from
12 the date of notice of violation should result in the Certificate authorized hereinafter becoming null
13 and void without further order of the Commission.

14 168. Staff further recommends that, if Diversified fails to meet any of the aforementioned
15 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
16 considered null and void without further order by the Commission.

17 QUEEN CREEK

18 169. With respect to Queen Creek's application for an extension of its Certificate, Staff is
19 recommending the approval of Queen Creek's request for the extension of its Certificate to provide
20 water service to the eastern three-quarters of Section 14, Township 2 South, Range 17 East for which
21 it is not yet certificated subject only to the condition that Queen Creek files, within 365 days of the
22 effective date of this Decision, a copy of its Maricopa County franchise issued by the Maricopa
23 County Board of Supervisors or the approval granted hereinafter will be rendered null and void. Staff
24 is also recommending that the Country Thunder parcel, located in Section 30, Township 2 South,
25 Range 3 East, Pinal County, Arizona, be deleted from H₂O's Certificate and transferred to Queen
26 Creek's Certificate.

27
28 the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 amendment of the Certificates of JUC, H₂O, Diversified and Queen Creek so that their certificated
2 service areas include the parcels and sections more fully described in Exhibits A and B.

3 5. JUC, H₂O, Diversified and Queen Creek are fit and proper entities to receive amended
4 Certificates which encompass the areas more fully described in Exhibits A and B.

5 6. Staff's recommendations with respect to the applications of JUC, H₂O, Diversified and
6 Queen Creek, as set forth in Findings of Fact Nos. 153, 154, 156, 157, 158, 159, 160, 161, 162, 163,
7 164, 165, 166, 167, 168, 169, and 171 for the amendment of their respective Certificates, should be
8 approved, except that we find parcel 1 should be certificated to JUC and while no Certificate for
9 water service should be issued to any applicant for parcel 2 a Certificate for wastewater service
10 should be issued to JUC, subject to the recommendations of Staff with the exception that a utility
11 cited for either a minor or major violation by ADEQ within the two year period of review following
12 the effective date of this Decision should have 90 days from the date of the notice of violation to cure
13 the defect or request an extension from the Commission in order to remedy the violation.

14 **ORDER**

15 IT IS THEREFORE ORDERED that the applications of Johnson Utilities, L.L.C., dba
16 Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc., and Queen Creek Water
17 Company for amendment of their Certificates of Convenience and Necessity for the operation of the
18 applicable water and/or waste water facilities in the areas more fully described in the parcels as set
19 forth in Exhibits A and B attached hereto be, and are hereby, conditionally approved subject to the
20 respective utilities meeting the applicable conditions as set forth in Findings of Fact Nos. 153, 154,
21 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171 and Conclusions of
22 Law Nos.4, 5 and 6 above.

23 IT IS FURTHER ORDERED that in the event Johnson Utilities, L.L.C. dba Johnson Utilities
24 Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company do not
25 timely meet the requirements according to Staff's recommendations as set forth in Findings of Fact
26 Nos. 153, 154, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171, or fail
27 to cure any major or minor violations cited by ADEQ within 90 days from the date of notice or
28 request an extension therefrom, then such conditional Certificate granted herein for the respective

1 parcel shall be rendered null and void without further order of the Commission.

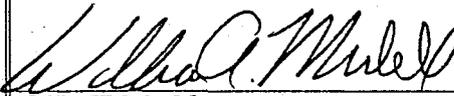
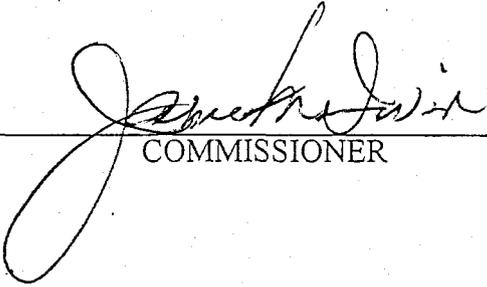
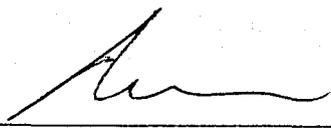
2 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
3 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall file, if not
4 previously filed, correct legal descriptions for the parcels and/or sections amending their Certificates
5 of Convenience and Necessity as described herein.

6 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
7 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall charge those
8 customers in the areas more fully described in Exhibits A and B their existing rates and charges until
9 further Order of the Commission.

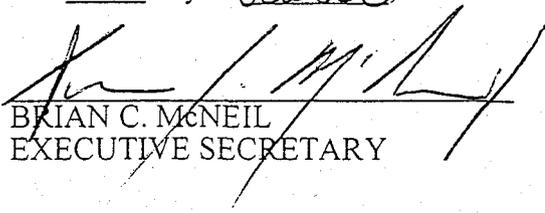
10 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company
11 shall file, within 30 days of the effective date of this Decision, with the Director of the Commission's
12 Utilities Division, an amended tariff schedule which addresses the issue described in Findings of Fact
13 No. 155.

14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

16
 17   
 18 _____
 19 CHAIRMAN COMMISSIONER COMMISSIONER

20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
21 Secretary of the Arizona Corporation Commission, have
22 hereunto set my hand and caused the official seal of the
23 Commission to be affixed at the Capitol, in the City of Phoenix,
24 this 4th day of October, 2001.

25 
 26 _____
 27 BRIAN C. McNEIL
 28 EXECUTIVE SECRETARY

26 DISSENT _____
27 MES:dap

1 SERVICE LIST FOR:

H₂O, INC.; JOHNSON UTILITIES, LLC;
DIVERSIFIED WATER UTILITIES, INC; and QUEEN
CREEK WATER COMPANY

2
3 DOCKET NOS.

W-02234A-00-0371; WS-02987A-99-0583; WS-
02987A-00-0618; W-02859A-00-0774; and W-01395A-
00-0784

4
5 Thomas H. Campbell
Michael Denby
6 LEWIS AND ROCA, L.L.P
40 N. Central Avenue
7 Phoenix, AZ 85004
Attorneys for Johnson Utilities, L.L.C.

8
9 Jay Shapiro
Karen E. Errant
FENNEMORE CRAIG, P.C.
10 3003 N. Central, Ste. 2600
Phoenix, AZ 85012
11 Attorneys for H2O Water Company

12 Charles A. Bischoff
JORDAN & BISCHOFF
13 7272 E. Indian School Road, Ste. 205
Scottsdale, AZ 85251
14 Attorneys for Queen Creek Water Company

15 Jeffrey C. Zimmerman
Brad K. Keogh
16 MOYES STOREY, LTD.
3003 N. Central, Ste. 1250
17 Phoenix, AZ 85012
Attorneys for Arizona Utility Supply & Service, L.L.C.

18
19 William Sullivan
MARTINEZ & CURTIS, P.C.
2712 N. 7th Street
20 Phoenix, AZ 85008

21 Petra Schadeberg
PANTANO DEVELOPMENT LTD. PARTNERSHIP
22 3408 N. 60th Street
Phoenix, AZ 85018

23
24 Richard N. Morrison
SALMON, LEWIS & WELDON
4444 N. 32nd Street, Ste. 200
25 Phoenix, AZ 85018

26
27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Kathy Aleman, Manager
WOLFCOR, L.L.C. & WOLFKIN FARMS
Southwest Properties, Inc.
3850 E. Baseline Road, Ste. 123
Mesa, AZ 85026

Dick Maes, Project Manager
VISTOSO PARTNERS, L.L.C.
1121 W. Warner Road, Ste. 109
Tempe, AZ 85284

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
 H2O/Johnson Utilities/Diversified/Queen Creek
 Request for CC&N Extension Areas
 Docket Nos. W-2234-00-371, et al.

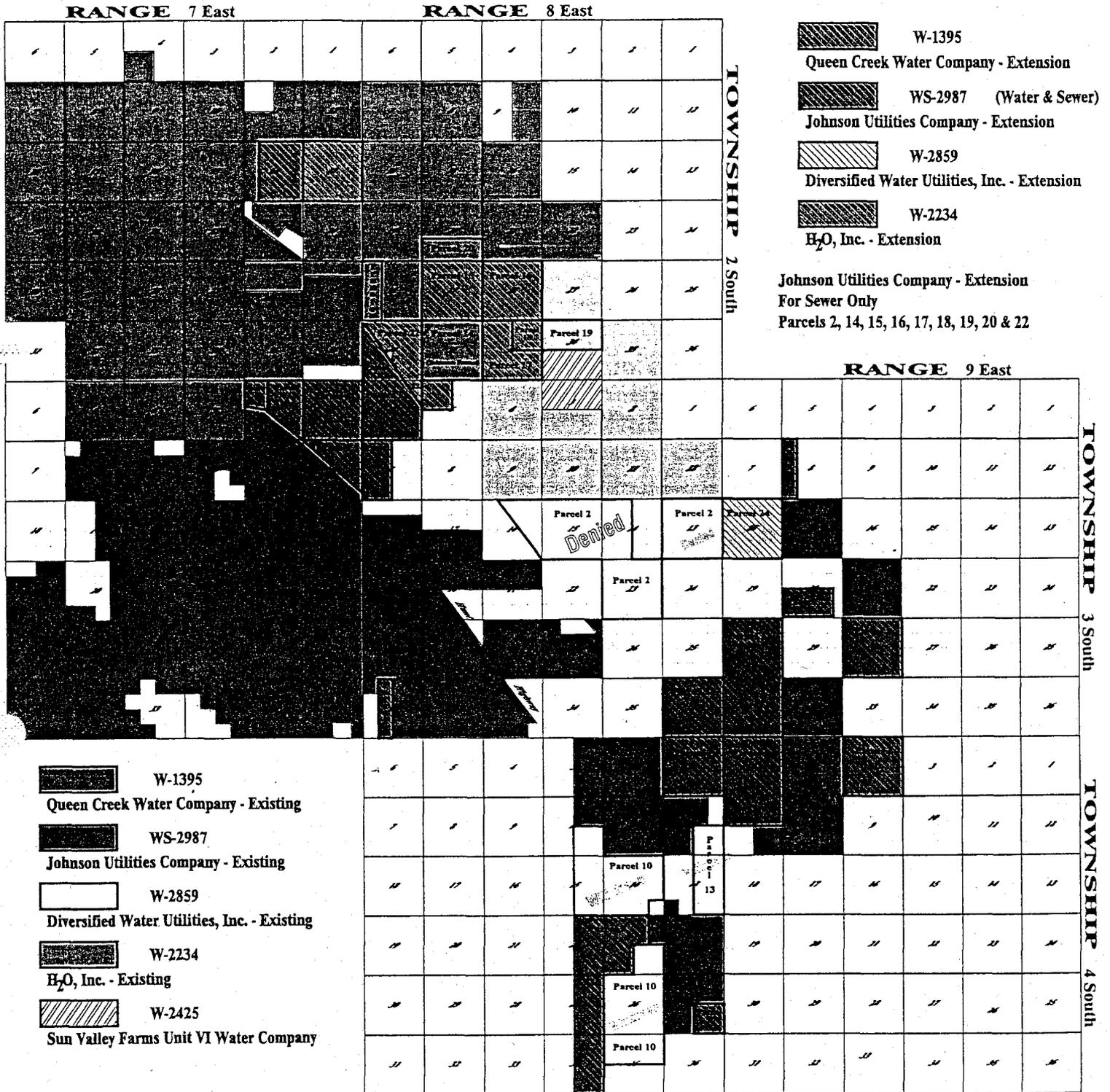
Parcel	Development	Twp/Rng	Description
1	Arizona Farms		
2	Bella Vista Farms		
3	Jorde Farms		
4	Whitehead		
5	Skyline		
6	Morning Sun Farms		
7	Shelton		
8	Various		
9	Farley Farms		
10	State of Arizona/Future Development		
11	Circle Cross Ranch (W of RR)		
12	Jorde/Morning Sun Farms		
13	BLM Property		
14	Johnson Farms/Combs School		
15	Pecan Estates		
16	Home Place		
17	Ware Farms		
18	Various		
19	Various		
20	Pecan Ranch		
21	Dobson Farms		
22	Circle Cross Ranch (E of RR)		
23	Magma Ranch		
24	Development - Sec 18, T3S, R9E		

Country Thunder	T2S, R8E	W 1/3 of Section 30
Miscellaneous	T2S, R7E	E 3/4 of Section 14

EXHIBIT 'A'

DECISION NO. 64062

ALLOCATION OF REQUESTED AREAS



JOHNSON UTILITIES COMPANY, ET AL.
DOCKET NO. WS-2987-99-583, ET AL.
PARCEL ALLOCATIONS

Parcel 2 - Denied for Water

Parcels 10 & 13 - Requests Withdrawn

Johnson Utilities - (Wastewater Only)

Parcels 2, 14, 15, 16, 17, 18, 19, 20 and 22

Johnson Utilities - (Water & Wastewater)

Parcels 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23

H2O, Inc. - (Water Only)

Parcels 15, 16, 17, 18 and 22

That portion of Parcel 14 not previously certificated to H2O

All of Section 13, Township 2 South, Range 7 East, in Maricopa County, Arizona

TRANSFER Country Thunder (the western one-third of Section 30, Township 2 South, Range 8 East, Pinal County, Arizona

Diversified - (Water Only)

Parcel 24

Queen Creek - (Water Only)

TRANSFER of Country Thunder from H2O (see above description)

Eastern three-fourths of Section 14, Township 2 South, Range 7 East, Maricopa County, Arizona

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

APR 22 2003

DOCKETED BY [Signature]

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF H2O, INC., FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONEINENCE AND NECESSITY

DOCKET NO. W-02234A-00-0371

IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES, L.L.C. DBA JOHNSON UTILITIES COMPANY FOR AN EXTENSION FOR 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-99-0583

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

DECISION NO. 65840

ORDER

Open Meeting
December 17 and 18, 2002
Phoenix, Arizona

BY THE COMMISSION:

On November 6 and 8, 2002, H2O, Inc. ("H2O") and Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC"), respectively, filed with the Arizona Corporation Commission ("Commission") requests for retroactive extensions of time to comply with Decision No. 63960 (September 4, 2001) as amended by Decision No. 64062 (October 4, 2001) in order to file required Arizona Department of Environmental Quality ("ADEQ") compliance documents.

1 On November 12, 2002, the Commission's Utilities Division ("Staff") filed responses to
2 H2O's and JUC's requests for retroactive extensions of time in order to comply with Decision No.
3 63960 as amended. In its response, Staff indicates that it does not oppose the requested extensions of
4 time for H2O and JUC to file the required ADEQ documentation.

5 On March 28, 2003, JUC submitted another Application for Retroactive Extension of Time to
6 Comply with Decision No. 64062 ("JUC's Second Request"). JUC's Second Request asks that the
7 Commission enter an Order:

8 A.) granting a retroactive extension of the deadline for compliance with Decision No.
9 64062;

10 B.) granting said extension on the express condition of JUC's resolution of its dispute
11 over compliance by ADEQ by execution of a Consent Judgment and payment in full of an agreed
12 upon \$80,000 civil penalty no later than seven days following issuance of the Commission's Order:

13 C.) reaffirming that, except as modified herein, Decision No. 64062 remains in full force
14 and effect.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 FINDINGS OF FACT

19 1. Pursuant to authority granted by the Commission, H2O is certificated to provide
20 public water service to various parts of Pinal and Maricopa Counties, Arizona.

21 2. Pursuant to authority granted by the Commission, JUC is certificated to provide water
22 and wastewater service in an area of approximately forty-five square miles southeast of Queen Creek
23 in various parts of Pinal County, Arizona.

24 3. On September 4, 2001, the Commission issued Decision No. 63960 which was
25 subsequently amended by Decision No. 64062 on October 4, 2001 in which it approved the extension
26 of the Certificates of Convenience and Necessity ("Certificate") of H2O and JUC and the other
27 above-captioned utilities subject to a number of conditions.

28 4. One condition required of H2O and JUC is to file, within 30 days of the anniversary

1 date of the Decision as amended each year for the next two years. documentation from the Arizona
2 Department of Environmental Quality ("ADEQ") indicating that H2O and JUC have been in
3 compliance with ADEQ for each year. Failure to submit this documentation in the Docket or failure
4 to correct any major or minor violation within 90 days from the date of notice of violation would
5 result in the Certificate authorized therein becoming null and void without further order of the
6 Commission.

7 5. The ADEQ documentation was to be filed by November 4, 2002.

8 6. On November 6 and 8, 2002, H2O and JUC, respectively, filed requests for retroactive
9 extensions of time to comply with Decision No. 63960 as amended in order to file the required
10 ADEQ compliance documentation.

11 7. In their requests, H2O and JUC stated that they required 30 and 60 days, respectively,
12 to file the required ADEQ documentation.

13 8. Both H2O and JUC indicated that the time was needed because they were awaiting the
14 documentation and were not sure when it would be received from ADEQ.

15 9. On November 12, 2002, the Commission's Utilities Division ("Staff") filed responses
16 to H2O's and JUC's requests for retroactive extensions of time in order to comply with Decision No.
17 63960 as amended.

18 10. In its responses, Staff indicates that it does not oppose the requested extensions of time
19 for H2O and JUC to file the required ADEQ documentation which will protect the public interest.

20 11. On November 20, 2002, H2O filed a copy of its documentation from ADEQ dated
21 November 19, 2002, indicating H2O has no major deficiencies and is delivering water which meets
22 the water quality requirements of ADEQ.

23 12. On March 28, 2003, JUC filed JUC's Second Request, which asks that the
24 Commission grant JUC a retroactive extension of time to comply with Decision No. 63960, as
25 amended by Decision No. 64062.

26 13. JUC's Second Request asks that the retroactive extension of time be expressly
27 conditioned on JUC's resolution of the dispute over compliance by ADEQ by execution of a Consent
28 Judgment and payment in full of the agreed upon \$80,000 civil penalty no later than seven (7) days

1 following the issuance of this Decision.

2 14. JUC's Second Request asks that the Commission reaffirm that, except as expressly
3 modified herein, Decision No. 64062 remains in full force and effect.

4 15. Decision No. 64062 granted JUC a CC&N, subject to certain conditions. One
5 condition directed JUC to maintain compliance with ADEQ requirements and to report to the
6 Commission by November 4, 2002, regarding that compliance. JUC failed to report to the
7 Commission in a timely manner as required by Decision No. 64062. Furthermore, JUC failed to
8 comply with ADEQ requirements. Through April 16, 2003, JUC was in non-compliance with ADEQ
9 requirements.

10 CONCLUSIONS OF LAW

11 1. JUC is a public service corporation within the meaning of Article XV of the Arizona
12 Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over the request of JUC herein.

14 3. JUC's Second Request for a retroactive extension of time is granted subject to the
15 above-stated conditions.

16 ORDER

17 IT IS THEREFORE ORDERED that JUC's Second Request for Retroactive Extension of
18 Time to comply with Decision No. 63930, as amended by Decision No. 64062, is granted.

19 IT IS FURTHER ORDERED that except as modified herein, Decision No. 64062 shall
20 remain in full force and effect.

21 IT IS FURTHER ORDERED that Staff shall conduct an investigation into JUC's adherence
22 with Commission rules and orders to determine whether an Order to Show Cause is warranted. Staff
23 shall issue a report regarding this matter no later than 90 days from the date of this Order.

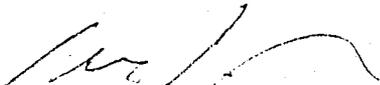
24 IT IS FURTHER ORDERED that JUC is to file documentation from the Arizona Department
25 of Environmental Quality ("ADEQ") within 30 days of each year's anniversary date of this Decision,
26 continuing perpetually until further order of the Commission, indicating compliance with ADEQ for
27 each year. In the event that JUC receives any Notices of Violation ("NOV") from ADEQ it will,
28 within seven days from receipt of such notice, provide a copy of such NOV to the Utilities Division

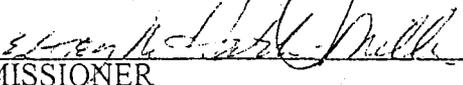
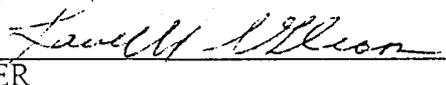
1 Director ("Director"). Subsequent to the transmission of such NOV, JUC will continue to provide
2 copies to the Director of all relevant documents, including but not limited to any documents, or
3 pleadings filed by ADEQ and or by JUC relating to the NOV and the steps JUC takes to come into
4 compliance. until the ultimate resolution of the NOV.

5 IT IS FURTHER ORDERED that if JUC fails to file the required documentation from ADEQ
6 within the required time-frame. or fails to timely provide the Director with copies of any NOV as
7 required herein, the Director shall, upon becoming aware of such failure, commence an Order to
8 Show Cause Proceeding against JUC forthwith, seeking such sanctions and Orders as the Director
9 deems appropriate.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
13   
14 CHAIRMAN COMMISSIONER COMMISSIONER

15  
16 COMMISSIONER COMMISSIONER

17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 22nd day of April, 2003.

22 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

23 DISSENT _____

24 DISSENT _____

25 MES:mlj

26

27

28

14

1 SERVICE LIST FOR:

H2O, INC. AND JOHNSON UTILITIES, L.L.C. dba
JOHNSON UTILITIES COMPANY

3 DOCKET NO.

W-02234A-00-0371 et al.

4 Richard L. Sallquist
5 SALLQUIST & DRUMMOND
6 2525 East Arizona Biltmore Circle, Ste. A117
7 Phoenix, AZ 85016
Attorneys for Johnson Utilities, L.L.C.

8 Jay Shapiro
9 Karen E. Errant
FENNEMORE CRAIG, P.C.
3003 N. Central, Ste. 2600
Phoenix, AZ 85012
10 Attorneys for H2O Water Company

11 H2O, Inc.
12 2125 E. 5th Street, Ste. 208
Tempe, AZ 85281

13 Charles A. Bischoff
14 JORDAN & BISCHOFF
7272 E. Indian School Road, Ste. 205
Scottsdale, AZ 85251
15 Attorneys for Queen Creek Water Company

16 William Sullivan
17 MARTINEZ & CURTIS, P.C.
2712 N. 7th Street
Phoenix, AZ 85008

18 Petra Schadeberg
19 PANTANO DEVELOPMENT LTD. PARTNERSHIP
3408 N. 60th Street
20 Phoenix, AZ 85018

21 Richard N. Morrison
22 SALMON, LEWIS & WELDON
4444 N. 32nd Street, Ste. 200
Phoenix, AZ 85018

23 Kathy Aleman, Manager
24 WOLFCOR, L.L.C. & WOLFKN FARMS
Southwest Properties, Inc.
3850 E. Baseline Road, Ste. 123
25 Mesa, AZ 85026

26 Dick Maes, Project Manager
27 VISTOSO PARNERS, L.L.C.
1121 W. Warner Road, Ste. 109
28 Tempe, AZ 85284

- 1 Christopher Kempley, Chief Counsel
Legal Division
- 2 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
- 3 Phoenix, Arizona 85007

- 4 Ernest Johnson, Director
Utilities Division
- 5 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
- 6 Phoenix, Arizona 85007

- 7 Richard Tobin
Deputy Director
- 8 ADEQ
3033 N. Central Avenue
- 9 Phoenix, AZ 85012

- 10 Bill DePaul
Enforcement Coordinator
- 11 Drinking Water Compliance and Enforcement Unit
ADEQ
- 12 3033 N. Central Avenue
Phoenix, AZ 85012

- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

EXHIBIT C

1 applicants and their continuing to charge their existing rates and charges in their respective extension
2 areas in the respective parcels as further delineated in Exhibit A. Staff also recommended the denial
3 of applications for certain parcels.

4 149. However, due to the ongoing nature of these proceedings, Staff amended a number of
5 its recommendations and, in a post-hearing filing on March 27, 2001, memorialized the amendments
6 which it made during the actual hearing.

7 150. Staff's witness, Mr. Mark DiNunzio, emphasized that he is not convinced that
8 development will take place in a timely manner as previously stated because he believes that there
9 has been a good deal of speculation presented by developers who would be able to capitalize on the
10 increased value of their property if it is included in a utility's Certificate. Therefore, Mr. DiNunzio
11 recommends that any Certificate from this proceeding be granted conditionally and subject to a
12 review after two years to determine the extent of development. As part of the two-year review, Staff
13 would have an additional period of time to review the development, or lack thereof, and file a report
14 either recommending final approval of the Certificate as requested, final approval of the Certificate
15 for the portions of the areas requested where development has taken place with a cancellation of the
16 remaining areas, and/or disapproval of the Certificate for all areas requested if no development has
17 taken place.

18 151. Staff indicates that since 1998, JUC has had 15 complaints, H₂O has had ten
19 complaints, Diversified has had no complaints and Queen Creek has had four complaints.

20 152. With respect to compliance issues, Staff found that JUC, H₂O, Diversified and Queen
21 Creek are current on their property taxes and filings with the Commission and are presently in
22 compliance with the rules of ADEQ with the exception of securing various approvals and permits to
23 construct and/or the filing of franchises for the requested parcels herein.

24 JUC

25 153. With respect to JUC's application for the extension of its water and wastewater
26 Certificate, Staff is recommending the following:

- 27 • that JUC's wastewater Certificate be conditionally extended to include parcels
28 2, 14, 15, 16, 17, 18, 19, 20, and 22;

- 1 • that JUC's water and wastewater Certificates be conditionally extended to
2 include parcels 3, 4, 5, 6, 7, 8, 9, 11, 12, 21 and 23;
- 3 • that JUC's application for parcel 1 be denied;
- 4 • that JUC's application with respect to its request to provide service for parcels
5 10 and 13 be withdrawn as requested by JUC;
- 6 • that JUC file a copy for a request for service to parcel 8 within 90 days of the
7 effective date of this Decision;
- 8 • that JUC file with the Commission in this Docket; within two years of the
9 effective date of this Decision, a copy of its franchise from Pinal County for
10 the extension of its Certificate for the areas authorized herein;
- 11 • that JUC file with the Commission in this Docket, within two years of the
12 effective date of this Decision, copies of all Certificates of Approval to
13 Construct ("CAC") and Certificates of Approval of Construction for
14 development in each of the respective approved parcels as authorized
15 hereinafter;
- 16 • that JUC file, within two years of the effective date of this Decision, a request
17 for Certificate review after which, Staff, at its discretion, shall perform a
18 physical plant inspection to determine the extent to which development has
19 commenced.⁸

18 After submission of JUC's request for review, Staff shall have 120 days to file a report
19 containing one of the following three recommendations:

- 20 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 21 ♦ final approval of the Certificate for portions of the parcels approved in this
22 proceeding with the cancellation of the undeveloped portions of the parcels; or
- 23 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

24
25
26
27 ⁸ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 154. Staff further recommends that JUC file, within 30 days of the anniversary date of this
2 Decision each year for the next two years, documentation from ADEQ indicating that JUC has been
3 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
4 or failure to correct any major or minor violation within 30 days from the date of notice of violation
5 should result in the Certificate authorized hereinafter becoming null and void without further order of
6 the Commission.

7 155. Staff further recommends that JUC file, within 30 days from the effective date of this
8 Decision, an amended waste water tariff schedule which includes language for its wastewater rates
9 and charges to state that said charges shall not become effective until wastewater first flows into the
10 collection system.

11 156. Staff further recommends that, if JUC fails to meet any of the aforementioned
12 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
13 considered null and void without further order by the Commission.

14 H₂O

15 157. With respect H₂O's application for the extension of its Certificate to provide public
16 water service, Staff is recommending the conditional approval of the application to extend service to
17 that portion of parcel 14 not previously certificated and parcels 15, 16, 17, 18, 22 and Section 13,
18 Township 2 South, Range 7 East in Maricopa County, Arizona.

19 158. Staff further recommends that H₂O file, within two years of the effective date of this
20 Decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") to be issued by
21 the Arizona Department of Water Resources ("ADWR") for the respective parcels and sections.

22 159. Staff further recommends that H₂O file, within two years of the effective date of this
23 Decision, a copy of its CAC to be issued by the ADWR for the main extension for the Combs School.

24 160. Staff also recommends that H₂O file, within two years from the effective date of this
25 Decision, a copy of its franchise from Pinal County for the extension areas represented by the
26 aforementioned parcels and Section 13.

27 161. Staff is also recommending the following:
28

- 1 • that H₂O file with the Commission in this Docket within two years of the effective
2 date of this Decision, a copy of its franchise from Pinal County for the extension of its
3 Certificate for the areas authorized hereinafter;
- 4 • that H₂O file with the Commission in this Docket, within two years of the effective
5 date of this Decision, copies of all Certificates of Approval to Construct ("CAC") and
6 Certificates of Approval of Construction for development in each of the respective
7 approved parcels as authorized hereinafter;
- 8 • that H₂O file, within two years of the effective date of this Decision, a request for
9 Certificate review after which, Staff, at its discretion, shall perform a physical plant
10 inspection to determine the extent to which development has commenced.⁹

11 After submission of H₂O's request for review, Staff shall have 120 days to file a report
12 containing one of the following three recommendations:

- 13 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 14 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
15 with the cancellation of the undeveloped portions of the parcels; or
- 16 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

17 162. Staff further recommends that H₂O file, within 30 days of the anniversary date of this
18 Decision each year for the next two years, documentation from ADEQ indicating that H₂O has been
19 in compliance with ADEQ for each year, and that failure to submit this documentation in the Docket
20 or failure to correct any major or minor violation within 30 days from the date of notice of violation
21 should result in the Certificate authorized hereinafter becoming null and void without further order of
22 the Commission.

23 163. Staff further recommends that, if H₂O fails to meet any of the aforementioned
24 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
25 considered null and void without further order by the Commission.

26
27 ⁹ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 DIVERSIFIED

2 164. With respect to Diversified's application for an extension of its Certificate, Staff is
3 recommending that the Commission approve the extension of its Certificate to include parcels 2 and
4 24.

5 165. Staff is further recommending that Diversified file, within two years of the effective
6 date of this Decision, the following: the developers' CAWS to be issued by ADWR; copies of its
7 CAC's to be issued by ADEQ; and a copy of its franchise for parcels 2 and 24 which are to be issued
8 by the Pinal County Board.

9 166. Staff is also recommending the following:

- 10 • that Diversified file with the Commission in this Docket, within two years of the
11 effective date of this Decision, copies of all Certificates of Approval to Construct
12 ("CAC") and Certificates of Approval of Construction for development in each of the
13 respective approved parcels as authorized hereinafter;
- 14 • that Diversified file, within two years of the effective date of this Decision, a request
15 for Certificate review after which, Staff, at its discretion, shall perform a physical
16 plant inspection to determine the extent to which development has commenced.¹⁰

17 After submission of Diversified's request for review, Staff file a report containing one of the
18 following three recommendations:

- 19 ♦ final approval of the Certificate for all parcels approved in this proceeding;
- 20 ♦ final approval of the Certificate for portions of the parcels approved in this proceeding
21 with the cancellation of the undeveloped portions of the parcels; or
- 22 ♦ disapproval of the Certificate for the parcel approved in this proceeding.

23 167. Staff further recommends that Diversified file, within 30 days of the anniversary date
24 of this Decision each year for the next two years, documentation from ADEQ indicating that
25 Diversified has been in compliance with ADEQ for each year and that failure to submit this

26 _____
27 ¹⁰ The Certificate review should include the following data: number of customers in the extended area, amount of
28 plant installed to serve the extended area, number of gallons sold in the extended area, the amount of revenue generated in
the extended area, the Master Plan for the parcels showing all plant installed and customer location, and any other
information Staff deems relevant.

1 documentation in the Docket or failure to correct any major or minor violation within 30 days from
2 the date of notice of violation should result in the Certificate authorized hereinafter becoming null
3 and void without further order of the Commission.

4 168. Staff further recommends that, if Diversified fails to meet any of the aforementioned
5 conditions within the time specified, the Certificate authorized hereinafter for the respective parcel be
6 considered null and void without further order by the Commission.

7 QUEEN CREEK

8 169. With respect to Queen Creek's application for an extension of its Certificate, Staff is
9 recommending the approval of Queen Creek's request for the extension of its Certificate to provide
10 water service to the eastern three-quarters of Section 14, Township 2 South, Range 17 East for which
11 it is not yet certificated subject only to the condition that Queen Creek files, within 365 days of the
12 effective date of this Decision, a copy of its Maricopa County franchise issued by the Maricopa
13 County Board of Supervisors or the approval granted hereinafter will be rendered null and void. Staff
14 is also recommending that the Country Thunder parcel, located in Section 30, Township 2 South,
15 Range 3 East, Pinal County, Arizona, be deleted from H₂O's Certificate and transferred to Queen
16 Creek's Certificate.

17 170. After reviewing the evidence in its entirety, we commend Staff at the end of this long
18 and complex proceeding and find the majority of their recommendations are reasonable in light of the
19 speculative nature of the purported development which is to take place in large undeveloped areas in
20 Pinal County, Arizona. Based on this speculation, we believe that Staff has made well-reasoned
21 unbiased recommendations with respect to recommending the issuance of conditional Certificates
22 which will be subject to further Commission review in the future.

23 171. For the present, we will adopt Staff's recommendations with respect to the approvals
24 granted hereinafter for the respective parcels as are described in Exhibits A and B attached hereto.
25 However, with respect to Staff's recommendation that an affected utility (JCU, H₂O, Queen Creek,
26 and Diversified) shall cure any minor or major violation of a requirement of ADEQ within 30 days
27 from the date of notice of violation, thus resulting in the nullification of an extension of that utility's
28 Certificate, we find Staff's recommendation to be too extreme and will allow the violating utility a

1 period of 90 days from the date of notice of the violation to either cure the violation or to request an
2 extension of time in which to resolve the problem with ADEQ. We shall also require JUC, H₂O,
3 Diversified and Queen Creek to file the correct legal descriptions for the respective parcels within 30
4 days of the effective date of this Decision.

5 CONCLUSIONS OF LAW

6 1. Applicants, JUC, H₂O, Diversified and Queen Creek are public service corporations
7 within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-252, 40-281 and 40-
8 282.

9 2. The Commission has jurisdiction over JUC, H₂O, Diversified and Queen Creek and of
10 the subject matter of the applications as amended.

11 3. Notice of the applications as amended and described herein was given in the manner
12 prescribed by law.

13 4. The public convenience and necessity require the public would benefit by the
14 amendment of the Certificates of JUC, H₂O, Diversified and Queen Creek so that their certificated
15 service areas include the parcels and sections more fully described in Exhibits A and B.

16 5. JUC, H₂O, Diversified and Queen Creek are fit and proper entities to receive amended
17 Certificates which encompass the areas more fully described in Exhibits A and B.

18 6. Staff's recommendations with respect to the applications of JUC, H₂O, Diversified and
19 Queen Creek, as set forth in Findings of Fact Nos. 153, 154, 155, 156, 157, 158, 159, 160, 161, 162,
20 163, 164, 165, 166, 167, 168, 169, and 171 for the amendment of their respective Certificates, should
21 be approved subject to the recommendations of Staff with the exception that a utility cited for either a
22 minor or major violation by ADEQ within the two year period of review following the effective date
23 of this Decision should have 90 days from the date of the notice of violation to cure the defect or
24 request an extension from the Commission in order to remedy the violation.

25 ORDER

26 IT IS THEREFORE ORDERED that the applications of Johnson Utilities, L.L.C., dba
27 Johnson Utilities Company, H₂O, Inc., Diversified Water Utilities, Inc., and Queen Creek Water
28 Company for amendment of their Certificates of Convenience and Necessity for the operation of the

1 applicable water and/or waste water facilities in the areas more fully described in the parcels as set
2 forth in Exhibits A and B attached hereto be, and are hereby, conditionally approved subject to the
3 respective utilities meeting the applicable conditions as set forth in Findings of Fact Nos. 153, 154,
4 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, and 171 and Conclusions
5 of Law Nos.4, 5 and 6 above.

6 IT IS FURTHER ORDERED that in the event Johnson Utilities, L.L.C. dba Johnson Utilities
7 Company, H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company do not
8 timely meet the requirements according to Staff's recommendations as set forth in Findings of Fact
9 Nos. 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168 169, and 171, or
10 fail to cure any major or minor violations cited by ADEQ within 90 days from the date of notice or
11 request an extension therefrom, then such conditional Certificate granted herein for the respective
12 parcel shall be rendered null and void without further order of the Commission.

13 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
14 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall file, if not
15 previously filed, correct legal descriptions for the parcels and/or sections amending their Certificates
16 of Convenience and Necessity as described herein.

17 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company,
18 H₂O, Inc., Diversified Water Utilities, Inc. and Queen Creek Water Company shall charge those
19 customers in the areas more fully described in Exhibits A and B their existing rates and charges until
20 further Order of the Commission:

- 21 ...
- 22 ...
- 23 ...
- 24 ...
- 25 ...
- 26 ...
- 27 ...
- 28 ...

EXHIBIT D

EXHIBIT E

RESOLUTION NO. 033104-DWL

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 further 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:

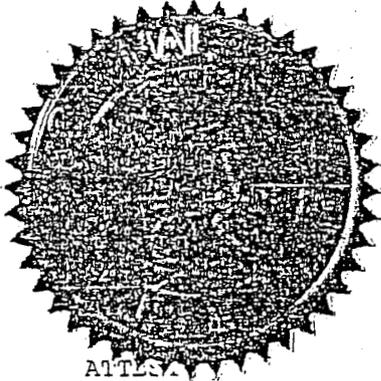
1. A non-binding determination as to whether the public convenience, necessity or welfare will be promoted by the formation or extension of the domestic water improvement district, prepared by an independent third party or entity (i) experienced in evaluating the water needs of similar areas, (ii) not 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 3rd 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

A handwritten signature in black ink, appearing to be "M. M.", is written over a horizontal line.

Shari Cluff
Deputy Clerk