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BEFORE THE ARIZONA CORPORATION COMMITTEE

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

DOCKET NO. W-02234A-00-0371

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

DOCKET NO. W-02987A-99-0583

Arizona Corporation Commission
DOCKETED

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

DOCKET NO. WS-02987A-00-0618

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

DOCKET NO. W-02859A-00-0774

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

**DOCKET NO. W-01395A-00-0784
H2O, INC.'S EXCEPTIONS TO
RECOMMENDED OPINION AND
ORDER**

1 Pursuant to A.A.C. R14-3-110(B), H2O, Inc. ("H2O"), hereby files its exceptions to the
2 recommended Opinion and Order of Administrative Law Judge Marc E. Stern ("Recommended
3 Order") in the above-captioned docket.

4 H2O supports the Recommended Order with one exception. H2O respectfully suggests
5 that the Commission further consider the recommendation to conditionally approve CC&N
6 extensions for H2O and the other water providers. The recommendation that the CC&N
7 extensions be conditional would not only deprive H2O of due process, but would harm the public
8 interest by discouraging comprehensive planning in favor of piecemeal development.
9 Additionally, H2O's exceptions correct the findings concerning H2O's franchises and the Combs
10 School property.

11
12 **I. Granting A Conditional CC&N Is Not In The Public Interest.**

13 Pursuant to the Recommended Order the approval of H2O's CC&N extension is
14 conditioned on three factors:

15 (1) Upon H2O's request for certificate review, filed two years from the effective
16 date of the Commission's decision, Staff's determination that sufficient
17 development has occurred to warrant granting a CC&N;

18 (2) H2O filing for each parcel, within two years of the effective date of the
19 Commission's decision, copies of the developers' Certificates of Assured Water
20 Supply ("CAWS"), Approvals to Construct ("ATC") and Approvals of
21 Construction ("AOC"); and

22 (3) H2O filing, each year for the next two years, documentation from the Arizona
23 Department of Environmental Quality ("ADEQ") indicating that H2O has been in
24 compliance with ADEQ regulations or that H2O corrected any major or minor
25 violation within 90 days or obtained an extension of time from the Commission.

26 The Recommended Order provides that should H2O fail to fulfill any of the above
conditions, H2O's certificate "for the respective parcel" is "considered null and void without
further order by the Commission." Page 30, ¶ 163. Further, if Staff determines that development

1 has not occurred, presumably H2O's certificate would be revoked or, at a minimum, not be
2 finally approved by the Commission. H2O agrees that copies of the developers' CAWS, ATC
3 and AOC should be filed with the Commission prior to serving a given parcel and that H2O
4 should remain in compliance with ADEQ regulations, however, the Recommended Order goes
5 well beyond that requirement.

6
7 The public interest is the controlling factor in all Commission decisions concerning
8 service by water companies. James P. Paul v. Arizona Corporation Commission, 137 Ariz. 426,
9 429, 671 P.2d 404, 407 (1983). The Recommended Order allows H2O to move forward with
10 service to the extension area only to have the conditional CC&N, or sporadic portions thereof,
11 denied two years later because sufficient development, as determined solely within Staff's
12 discretion, has not taken place on any given parcel. Although H2O understands the
13 Commission's desire not to promote speculative development, the evidence in this proceeding
14 demonstrates that substantial development is planned for the extension area. H2O recognizes
15 that factors such as the recent downturn in the economy may result in the delay of any one of the
16 planned developments, however, H2O believes that the benefits of comprehensive long-term
17 planning and development far outweigh the risk that the Commission may award territory where
18 development is subsequently delayed. The risk is further outweighed by the potential harm to
19 H2O and its customers if H2O's master planning is compromised by future alteration of H2O's
20 certificated service area.

21 For many years, H2O has planned for and worked towards serving the parcels to which it
22 seeks to extend service. Instead of expanding its facilities in a piecemeal fashion, H2O
23 developed a Master Plan to ensure that H2O can provide safe and reliable water utility service to
24 the expansion area while, at the same time, benefiting customers in its existing CC&N through
25 increased system redundancy and greater economies of scale. These benefits can be obtained
26

1 only through comprehensive planning and development and will not change because one or more
2 parcels do not develop on schedule.

3 By approving a conditional CC&N the Commission creates a situation where H2O may
4 continue to develop and implement its Master Plan only to have the time and money invested
5 therein rendered meaningless through no fault of H2O or its customers. To avoid such losses,
6 H2O's alternative choice is to install facilities in a piecemeal fashion. Neither of these options is
7 in the public interest.

8
9 An additional factor that the Commission should consider is the tremendous amount of
10 time and money that was expended by all parties in these proceedings. Final resolution of the
11 pending dockets will avoid lengthy and costly litigation in the future. Granting H2O a CC&N
12 for the expansion area only to take it away, even though H2O remains ready and able to serve, is
13 antithetical to the public interest. See James P. Paul, 137 Ariz. at 429, 671 P.2d at 407. H2O,
14 therefore, requests that the Commission condition approval of H2O's CC&N extension only
15 upon the requirement that H2O file copies of the developers' CAWS, ATC and AOC with the
16 Commission prior to serving a given parcel and, for each year for the next two years, file
17 documentation indicating whether H2O has been in compliance with ADEQ regulations.

18 Finally, the Recommended Order threatens H2O's due process rights. First, the order
19 provides for a final decision on the CC&N extension in two years based solely on Staff's report.
20 No process for H2O to respond to, or present evidence contrary to, the Staff report if H2O
21 disagrees with the Staff's recommendation is provided. Second, the Recommended Order
22 provides that H2O's CC&N is "considered null and void without further order by the
23 Commission" if H2O fails to correct a violation of ADEQ regulations within 90 days or if H2O
24 fails to comply with any of the conditions placed on the CC&N extension. H2O is entitled to
25 notice and an opportunity to be heard prior to the alteration or deletion of its CC&N. A.R.S.
26

1 § 40-252; James P. Paul, 137 Ariz. at 428, 671 P.2d at 406. If the Commission believes that
2 H2O is unwilling or unable to provide service at a reasonable rate, the Commission's remedy is
3 to initiate a proceeding pursuant to A.R.S. § 40-252 to revoke or alter H2O's CC&N. Although
4 H2O does not agree that a conditional CC&N extension is in the public interest, at the very least,
5 the Commission should afford H2O the due process to which it is entitled.

6 **II. H2O's Franchises.**
7

8 On Page 29, ¶ 160 and Page 30, the first bullet point under ¶ 161, the Recommended
9 Order requires H2O to submit a copy of its franchise from Pinal County for the extension areas,
10 including Section 13. Section 13, Township 2 South, Range 7 East is actually located in
11 Maricopa County. Further, on July 23, 2001, H2O filed a copy in this docket of its Franchise
12 granted by Maricopa County for Section 13 and various other areas. Additionally, a copy of
13 H2O's Franchise Agreement granted by Pinal County, which includes all of the extension areas
14 in Pinal County, was filed in this docket as Exhibit 8 to H2O's Application dated May 30, 2000.
15 Therefore, H2O believes that ¶ 160 and the first bullet point of ¶ 161 should be deleted from ¶ 6
16 of the Conclusions of Law and the Order portion of the Recommended Order as these conditions
17 have already been satisfied.

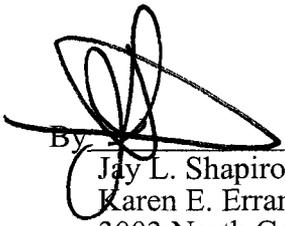
18 **III. Combs School**
19

20 On Page 29, ¶ 159 the Recommended Order requires H2O to submit a copy of the ATC
21 for the main extension for the Combs School. The Combs School is located within H2O's
22 existing CC&N and service to the school does not impact H2O's extension request. Therefore,
23 H2O does not believe it is appropriate to include this requirement in the Commission's decision.
24 Additionally, since the hearing in this docket, the Combs School has withdrawn its request for
25 service. H2O now plans to install the 12-inch line in 3 or 4 phases as required to serve customers
26 on the west sides of Vineyard Road located within H2O's existing CC&N.

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RESPECTFULLY SUBMITTED this 24th day of August, 2001.

FENNEMORE CRAIG, P.C.



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AN ORIGINAL and ten copies
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