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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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

DOCKET NO. W-02234A-00-0371

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

DOCKET NO. WS-02987A-99-0583

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

DOCKET NO. WS-02987A-00-0618

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

DOCKET NO. W-02859A-00-0774

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

DOCKET NO. W-01395A-00-0784

24 **STAFF'S RESPONSE TO JOINT APPLICATION FOR APPROVAL OF**
25 **SETTLEMENT AGREEMENT FILED BY H2O INC.,**
26 **JOHNSON UTILITIES COMPANY AND**
27 **QUEEN CREEK WATER COMPANY**

27 In accordance with the Procedural Order issued in these matters on January 29, 2001, the
28 Utilities Division staff ("Staff") of the Arizona Corporation Commission ("Commission") hereby

1 files its response to the Settlement Agreement and Joint Application for Approval Thereof filed on
2 January 24, 2001 by H2O Inc. ("H2O"), Johnson Utilities Company ("JUC") and Queen Creek Water
3 Company ("QWC"). The Joint Application for Approval of the Settlement Agreement ("Joint
4 Application") requests that the Commission issue an Order finding that the terms and conditions of
5 the Settlement Agreement are just and reasonable, concluding that the Settlement Agreement is in
6 the public interest, approving the Settlement Agreement, and implementing the terms of the
7 Settlement Agreement. For the reasons set forth below, Staff does not believe that approval and
8 implementation of the terms of the Settlement Agreement at this time would be just and reasonable
9 or in the public interest.

10 **I. The Joint Application is Expressly Conditioned Upon Acceptance and Approval Without**
11 **Change.**

12 Item 11 on page 5 of the Joint Application provides that if the Commission does not accept
13 and approve the Settlement Agreement without change, the Joint Application will be withdrawn and
14 the parties to the Settlement Agreement will pursue their respective pending applications. Because
15 the Joint Application requests approval of all the terms and conditions of the Settlement Agreement
16 without change, and because Staff does not believe that all the terms and conditions of the Settlement
17 Agreement are just and reasonable, Staff cannot recommend approval of the Joint Application.

18 **II. The Application of Diversified Water Utilities, Inc. ("Diversified") is Not Moot.**

19 The Joint Application states in Item 5 on page 3 that "The County's approval of a Water
20 Improvement District and the condemnation, purchase or acquisition of the water utility facilities
21 of Diversified will render Diversified's application to extend its CC&N moot." Staff does not
22 believe that the Commission should rely on this statement as representing a future certainty. Such
23 reliance would be premature. If the Pinal County Board of Supervisors acts in the future to approve
24 the formation of a Water Improvement District and if in the future that putative district achieves the
25 acquisition of Diversified's assets, Staff will comment on the effects of those actions and make
26 recommendations as to how the Commission should proceed on Diversified's pending application.

27 However, no such district formation has yet been authorized by the Pinal County Board of
28 Supervisors, and Staff has received no indication of any funds being made available for the

1 acquisition of Diversified's assets.¹ Staff has consistently stated to all the parties to this matter
2 Staff's position that it would support an agreement entered into by all the parties. Staff believes that
3 the Settlement Agreement completely fails to address Diversified's interests in these contested
4 matters and therefore cannot recommend approval of the Joint Application.

5 **III. Approval of the Joint Application Would Approve Extensions into New Territory Not**
6 **Previously Requested in the Applications of Any Parties.**

7 Approval of the Joint Application would require the Commission to grant additional territory
8 to H2O, JUC and QWC that has not heretofore been included in any of the pending applications.

9 Staff believes that the Settlement Agreement itself does not provide an adequate factual basis to
10 allow the Commission to make the public interest determination necessary to support such grants.

11 Staff is willing to analyze H2O, JUC and QWC's new requests for additional territorial extensions
12 and to provide recommendations thereon in the form of an additional Staff Report. However,
13 analysis and preparation of a Staff Report on those newly requested areas will require additional
14 time. In addition, other parties should have an opportunity to respond to the new Staff Report prior
15 to a Commission decision on the new issues. Staff would therefore support bifurcation of these new
16 requests from the current proceeding in order to allow adequate time for Staff to file its
17 recommendations on the new areas and to allow H2O, JUC, QWC and Diversified to respond.

18 **IV. Approval of the Joint Application Would Grant Extensions into New Territory Having**
19 **No Demonstrated Need for Service.**

20 Approval of the Joint Application would require the Commission to grant to JUC the right
21 to provide water and wastewater service to certain areas in which Staff has determined that no need
22 for service exists at this time. Staff remains committed to its recommendations regarding need in
23 the Staff Report filed January 9, 2001, and cannot support the Settlement Agreement's contrary
24 terms.

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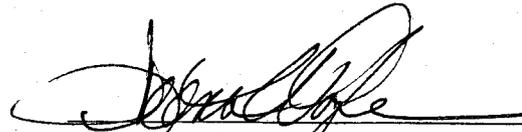
26 ...

27 _____
28 ¹ Subsequent to the filing of the Joint Application for Approval of the Settlement Agreement, Staff learned that notice of a public hearing on the formation of the Skyline Domestic Water Improvement District is scheduled to be published on February 15 and 22, 2001, with the public hearing to be held on February 28, 2001.

1 **V. Conclusion.**

2 For the above reasons, Staff recommends that the Joint Application not be approved.

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4 RESPECTFULLY SUBMITTED this 8th day of February, 2001.

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11 The Original and fifteen
12 copies of the foregoing
13 filed this 8th day of
14 February, 2001 with:

13 Docket Control
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15 1200 West Washington Street
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17 mailed this 8th day of
18 February, 2001 to:

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