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Arizona Corporation Commission

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AZ CORP COMMISSION DOCUMENT CONTROL

1 WILLIAM MUNDELL
 Chairman
 2 JAMES M. IRVIN
 Commissioner
 3 MARC SPITZER
 4 Commissioner

JAN 24 2001

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BEFORE THE ARIZONA CORPORATION COMMISSION

6 IN THE MATTER OF THE APPLICATION
 7 OF H2O, INC., FOR AN EXTENSION OF
 8 ITS EXISTING CERTIFICATE OF
 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 OF ITS CERTIFICATE OF
 13 CONVENIENCE AND NECESSITY TO
 14 PROVIDE WATER AND WASTEWATER
 SERVICE TO THE PUBLIC IN THE
 DESCRIBED AREA IN PINAL COUNTY,
 ARIZONA.

DOCKET NO. W-02987A-99-0583

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

DOCKET NO. WS-02987A-00-0618

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

DOCKET NO. W-02859A-00-0774

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

DOCKET NO. W-01395A-00-0784
**NOTICE OF FILING SETTLEMENT
 AGREEMENT AND JOINT
 APPLICATION FOR APPROVAL
 THEREOF**

1 H2O, Inc. ("H2O"), Johnson Utilities L.L.C. ("Johnson Utilities") and Queen
2 Creek Water Company ("Queen Creek") (collectively the "Parties") hereby jointly provide notice
3 of filing the Settlement Agreement, dated January 23, 2001, that has been reached among the
4 Parties in an effort to resolve all issues raised in the above-captioned dockets. A copy of the
5 Settlement Agreement is attached hereto as Exhibit A. The Parties hereby jointly apply for an
6 Order approving the terms and conditions of the Settlement Agreement. In support of this
7 Application, the Parties state as follows:

8 1. H2O filed an application on May 30, 2000, and amendment on December
9 15, 2000, for an extension to its Certificate of Convenience and Necessity ("CC&N") to provide
10 water utility service to Parcels 5, 6, 11, 14, 15, 16, 17, 18, 20, and 22 as described in the Parcel
11 List, Attachment A to the Settlement Agreement.

12 2. Johnson Utilities filed an application on October 15, 1999, and
13 amendments on November 1, 1999, June 15, 2000, July 5, 2000, August 25, 2000 and September
14 15, 2000, for an extension to its CC&N to provide water and/or wastewater utility service to all
15 of the Parcels on the Parcel List.

16 3. Queen Creek filed an application on October 4, 2000, for an extension to
17 its CC&N to provide water utility service to Parcels 15, 16, 17, and 18 and the portions of
18 Parcels 11 and 22 lying in Section 31, Township 2 South, Range 8 East, all on the Parcel List.

19 4. Diversified Water Utilities, Inc. ("Diversified") filed an application on
20 October 2, 2000 and amendments on October 3, 2000 and November 3, 2000, for an extension to
21 its CC&N to provide water utility service to Parcels 15, 16, 17, 18 and 22 on the Parcel List.

22 5. The Parties have been informed that the landowners and customers within
23 Diversified's CC&N area have filed a petition with Pinal County requesting that the Pinal
24 County Board of Supervisors authorize the formation of a Water Improvement District that will
25 condemn, purchase or otherwise acquire the water utility facilities of Diversified and become the
26

1 water provider in what is now Diversified's CC&N area.¹ The County's approval of a Water
2 Improvement District and the condemnation, purchase or acquisition of the water utility facilities
3 of Diversified will render Diversified's application to extend its CC&N moot.

4 6. The Settlement Agreement addresses two areas, Section 13 and the eastern
5 three fourths of Section 14, Range 7 East, Township 2 South, Maricopa County, not previously
6 addressed in the Parties' applications. These areas are not currently within the certificated area
7 of any water utility, and are contiguous to H2O and Queen Creek. Addressing these areas in this
8 proceeding will avoid wasted resources caused by subsequent proceedings and provide certainty
9 to the landowners. In addition, the Settlement Agreement contemplates the further expansion of
10 Johnson Utilities' wastewater CC&N to include three full sections and portions of four sections
11 included in Queen Creek's CC&N and that property within H2O's CC&N not already located
12 within the service area of any other wastewater service provider, which relief was not included in
13 Johnson Utilities' application. At the present time, there are no certificated wastewater providers
14 within H2O's CC&N.

15 7. The Parties maintain that this Joint Application is in the public interest and
16 should be granted. The Settlement Agreement will promote orderly development in Pinal and
17 Maricopa Counties. If approved, the Settlement Agreement will foster cost efficient extension of
18 service to new areas which will help minimize the rate impact of extending service. Further, the
19 expeditious resolution of the pending dockets will avoid lengthy and costly litigation and protect
20 landowners and developers currently threatened by the uncertainty of when and by whom they
21 will receive water and wastewater utility service. The Settlement Agreement is supported by
22 Pinal County and the major landowners. Copies of letters from landowners in support of the
23 terms and conditions of the Settlement Agreement are attached hereto as Exhibit B. The Parties
24

25 ¹ It is contemplated that the Water Improvement District will include, at least initially only 5 of
26 the 9 Sections of land presently included in Diversified's CC&N because the remaining lands,
which are not served by Diversified, are owned by the State of Arizona which cannot petition the
County to form an improvement district. A.R.S. § 48-902 and Attorney General Opinion 71-33.

1 anticipate filing additional letters in support of the Settlement Agreement in the near future.

2 8. Pursuant to the terms of the Settlement Agreement, the Parties are
3 modifying the relief requested in their respective applications as follows:

4 (a) H2O's CC&N will be extended to include that portion of Parcel 14 not
5 currently located within H2O's CC&N consisting of Section 5, Range 8 East, Township 3 South,
6 Pinal County, Parcels 15, 16, 17, 18 and 22 as described in the Parcel List and Section 13, Range
7 7 East, Township 2 South, in Maricopa County. In addition, the Country Thunder property,
8 comprising approximately the western one-third of Section 30, Range 8 East, Township 2 South,
9 south of Queen Creek Wash will be deleted from H2O's CC&N. A map depicting the Country
10 Thunder property and area sought in Section 13, Range 7 East, Township 2 South, in Maricopa
11 County is attached hereto as Exhibit C;

12 (b) Johnson Utilities' water CC&N will be expanded to include Parcels 1
13 through 13, 21 and 23 on the Parcel List;

14 (c) Queen Creek's CC&N will be extended to include the Country Thunder
15 property, comprising approximately the western one-third of Section 30, Range 8 East, Township
16 2 South, south of Queen Creek Wash and the uncertificated portion of Section 14, Range 7 East,
17 Township 2 South, in Maricopa County (See Exhibit C); and

18 (d) Johnson Utilities' wastewater CC&N will be expanded to include all of
19 H2O's CC&N area to the extent lands therein are is not already served by a wastewater service
20 provider, and the following portions of Queen Creek's CC&N area: Sections 34, 35, 36, the
21 southern half of Sections 26 and 27, and the southern three-quarters of Section 25, Township 2
22 South, Range 7 East; and Section 30 (the western one-third south of the Queen Creek Wash),
23 Township 2 South, Range 8 East;

24 9. Notice of this Application will be provided by the Parties as required by
25 the Commission. Notice will be given by publication at least once in a newspaper of general
26 circulation in the area. Proof of service of the notice will be filed with the Commission.

1 10. Subject to the modifications described in Paragraph 8 above, all other
2 provisions of the Parties' applications remain unchanged and are hereby incorporated by
3 reference in support of this Joint Application.

4 11. The Settlement Agreement is expressly conditioned upon acceptance and
5 approval by the Commission without change. In the event the Commission does not accept and
6 approve the Settlement Agreement, this application shall be deemed withdrawn by the Parties
7 and the Parties will pursue their respective applications without the modifications described
8 herein.

9 WHEREFORE, the Parties respectfully request that the Administrative Law Judge issue a
10 procedural order establishing a schedule for the filing of written comments concerning the
11 Settlement Agreement and any responses thereto.

12 WHEREFORE, the Parties respectfully request that the Commission issue an Order:

- 13 A. Finding that the terms and conditions of the Settlement Agreement are just
14 and reasonable;
- 15 B. Concluding that the Settlement Agreement is in the public interest;
- 16 C. Approving the Settlement Agreement; and
- 17 D. Implementing the terms and conditions of the Settlement Agreement.

18 DATED this 24th day of January, 2001.

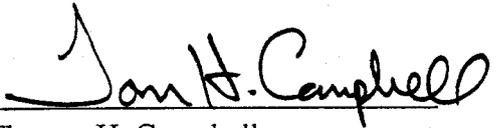
19
20 FENNEMORE CRAIG, P.C.

21
22
23 By  _____

24 Jay Shapiro
25 Karen E. Errant
26 3003 North Central, Suite 2600
 Phoenix, Arizona 85012
 Attorneys for H2O, Inc.

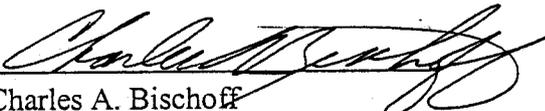
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LEWIS & ROCA

By 

Thomas H. Campbell
Michael L. Denby
40 N. Central Avenue
Phoenix, Arizona 85007
Attorneys for Johnson Utilities L.L.C.

JORDAN & BISCHOFF

By 

Charles A. Bischoff
7272 E. Indian School Road, Suite 205
Scottsdale, AZ 85251
Attorneys for Queen Creek Water Company

AN ORIGINAL and ten copies
of the foregoing were filed
this 24th day of January, 2001 with:

Docketing Supervisor
Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

A COPY of the foregoing
was delivered this 24th
day of January, 2001 to:

Marc Stern, Hearing Officer
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Teena Wolfe, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

1 A COPY of the foregoing
2 was mailed this 24th
3 day of January, 2001 to:

4 Petra Schadeberg
5 Pantano Development Limited Partnership
6 3408 North 60th Street
7 Phoenix, Arizona 85018-6702

8 William P. Sullivan
9 MARTINEZ & CURTIS
10 2712 N. 7th Street
11 Phoenix, AZ 85006-1090

12 Richard N. Morrison
13 SALMON, LEWIS & WELDON
14 4444 N. 32nd Street, Suite 200
15 Phoenix, AZ 85018

16 Louis Felix
17 18100 Walter Butte Drive
18 Florence, AZ 85232-9700

19 Dick Ames
20 Vistas Partners, O.K.
21 1121 West Warner Road, Suite 109
22 Tempe, AZ 85284

23 Kathy Almena
24 Wellford, O.K.
25 3850 E. Baseline Road, Suite 123
26 Mesa, AZ 85206

By 

1145102.1/46327.802

EXHIBIT A

SETTLEMENT AGREEMENT

H2O, Inc. ("H2O"), Queen Creek Water Company ("Queen Creek") and Johnson Utilities L.L.C. ("Johnson Utilities"), (collectively the "Parties") agree this 23rd day of January, 2001, to a settlement (the "Agreement") of their pending CC&N expansion applications in dockets W-02234A-00-0371, WS-02987A-99-0583; WS-02987A-00-0618 and W-01395A-00-0784 (the "CC&N Expansion Cases"). The following terms and conditions, including Attachment A appended hereto (hereinafter referred to as the "Parcel List") are intended to resolve all of the issues among the Parties associated with the CC&N Expansion Cases.

RECITALS

WHEREAS, the Parties desire to adopt this Agreement to allow an expeditious resolution of conflicting CC&N expansion applications and to provide landowners certainty with respect to water and wastewater service in northern Pinal County.

WHEREAS, the Parties agree that this Agreement will be in the public interest because it will promote orderly development of Pinal County, better ensure economic viability of the Parties, promote cost efficient extension of service to new areas and construction of facilities which will help minimize rate impact of extensions, and avoid lengthy and costly litigation. The settlement has been encouraged and supported by Pinal County.

WHEREAS, a petition has been filed to create a water improvement district that will condemn, purchase or otherwise acquire the water utility facilities of Diversified Water Utilities, Inc. ("Diversified") and become the provider of water utility service in Diversified's CC&N area.

WHEREAS, the Parties desire that the Commission issue an Order:

- A. finding that the terms and conditions of this Settlement Agreement are just and reasonable;
- B. concluding that this Settlement Agreement is in the public interest;
- C. approving this Settlement Agreement; and
- D. implementing the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises, covenants and undertakings set forth herein, the Parties agree as follows:

TERMS

1. H2O's CC&N will be expanded to include that portion of Parcel 14 not currently located within H2O's CC&N consisting of Section 5, Range 8 East, Township 3 South, Pinal County, and Parcels 15, 16, 17, 18 and 22 as described in the Parcel List. In addition, Johnson Utilities will withdraw its request for the deletion of H2O's CC&N in Parcels 14 and 20 on the Parcel List.
2. Johnson Utilities' water CC&N will be expanded to include Parcels 1 through 13 and Parcels 21 and 23 on the Parcel List.
3. Queen Creek's CC&N will be expanded to include the Country Thunder property, comprising approximately the western one-third of Section 30, Range 8 East, Township 2 South, south of Queen Creek Wash. H2O agrees to the deletion of this parcel from its CC&N.
4. Queen Creek's CC&N will be expanded to add the currently uncertificated portion of Section 14, Range 7 East, Township 2 South, in Maricopa County.

5. H2O's CC&N will be expanded to add Section 13, Range 7 East, Township 2 South, in Maricopa County.

6. Johnson Utilities' wastewater CC&N will be expanded to provide wastewater service to all 23 parcels on the Parcel List.

7. Johnson Utilities' wastewater CC&N will be expanded to include all of H2O's CC&N area to the extent that area is not already served by an authorized wastewater provider, and the following portions of Queen Creek's CC&N area: Sections 34, 35, 36, the southern half of Sections 26 and 27, and the southern three-quarters of Section 25, Township 2 South, Range 7 East; and Section 30 (the western one-third south of the Queen Creek Wash), Township 2 South, Range 8 East.

8. The Parties agree to file a joint application with the Arizona Corporation Commission to, among other things:

A. Withdraw Johnson Utilities' request for the deletion of H2O's CC&N in parcels 14 and 20 on the Parcel List.

B. Expand Queen Creek's CC&N to include the Country Thunder property and delete this parcel from H2O's CC&N.

C. Expand Queen Creek's CC&N to add the currently uncertificated portion of Section 14, Range 7 East, Township 2 South.

D. Expand H2O's CC&N to add Section 13, Range 7 East, Township 2 South.

E. Expand Johnson Utilities' wastewater CC&N to include Sections 34, 35, 36 and the south half of Sections 26 and 27, and the southern three-quarters of Section 25, Township 2 South, Range 7 East; and Section 30 (the western one-third south of Queen Creek Wash), Township 2 South, Range 9 East.

F. Expand Johnson Utilities' wastewater CC&N to include all of H2O's current CC&N area to the extent that area is not already served by a certificated or municipal wastewater service provider.

G. Approve all other provisions of this Settlement Agreement.

9. H2O is not currently amending its CC&N application to add the state land portion of Section 5, Township 3 South, Range 8 East that lies north and east of the railroad tracks. However, the Parties agree that if H2O requests a CC&N expansion to include this portion of state land in the future, neither Johnson Utilities nor Queen Creek will oppose that application.

10. The Parties agree that they will not purchase wells within the CC&N areas of each other without the consent of the other Party.

11. Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance and approval of the Agreement by the Commission without change. Unless the Parties to this Agreement otherwise agree, in the event that the Commission fails to accept and approve this Agreement according to its terms, then it shall be deemed withdrawn by the Parties and the Parties shall be free to pursue their respective positions in the CC&N Expansion Cases.

12. This Agreement represents the Parties' mutual desire to compromise and settle disputed claims and issues regarding the CC&N Expansion Cases in a manner consistent with the public interest and, as such, represents a compromise of the positions of the Parties. Further, this Agreement was reached by the Parties contingent on the understanding that Pinal County will authorize a Water Improvement District that will condemn, purchase or otherwise acquire Diversified's

Water Utility Facilities and become the water provider in what is now the Diversified's CC&N, thereby rendering Diversified's CC&N extension application (Arizona Corporation Commission Docket No: W-02859A-00-0774) moot.

13. Execution and acceptance of this Agreement is without prejudice to any position taken by any Party in the CC&N Expansion Cases and none of the positions taken herein by any of the Parties may be referred to, cited or relied upon by any other Party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

14. All negotiations relating to or leading to this Agreement are privileged and confidential, and no Party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

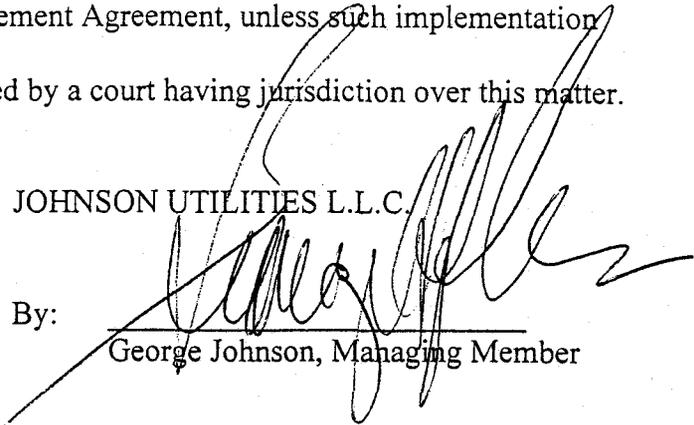
15. This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised by them in the CC&N Expansion Cases and is a complete and total settlement among the Parties.

16. Each signatory Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue.

17. This Agreement shall apply to and be binding upon the Parties and their respective successors and assigns.

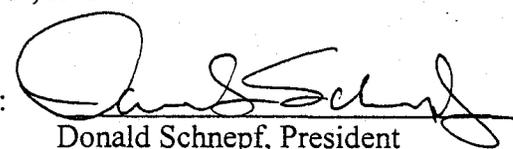
18. The provisions of this Settlement Agreement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement Agreement, unless such implementation and enforcement is stayed or enjoined by a court having jurisdiction over this matter.

JOHNSON UTILITIES L.L.C.

By: 

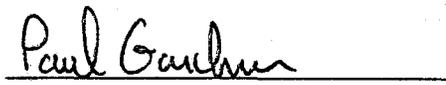
George Johnson, Managing Member

H2O, INC.

By: 

Donald Schnepf, President

QUEEN CREEK WATER COMPANY

By: 

Paul Gardner, President

EXHIBIT B



Mark Schnepf

January 17, 2001

Mr. Paul Gardner
Queen Creek Water Co.
22036 S. Ellsworth Rd.
Queen Creek, AZ 85242

Dear Mr. Gardner:

It has come to my attention that several water companies in the area have met to discuss where service boundaries should be located. It is also my understanding that the companies have come to an agreement conditioned upon ACC approval. As you are aware, my farm is in both the H2O service area and the Queen Creek Water service area. This makes it extremely difficult and complicated for me to plan for the future of my farm. I support the proposed change and ask that you share my feelings with the ACC, and therefore would appreciate consideration of moving the property specified below into Queen Creek Water Company Certificated.

The property I am referring to is lots 4,5,8,9,10,11 Sec 30 T2S R8E, the site of Country Thunder U.S.A. Your assistance in this matter is greatly appreciated. If you have any questions or the ACC has any questions please do not hesitate to call.

Sincerely,

Mark Schnepf

**EUELL BARNES
C/O CUSTOM FARM SERVICES
P. O. BOX 489
QUEEN CREEK, AZ 85242**

January 17, 2001

Queen Creek Water Company
22036 South Ellsworth Road
Queen Creek, AZ 85242

Dear Sirs:

I, Euell Barnes, am the property owner of Leslie Estates located at northeast corner of Crismon and Ocotillo Roads in Queen Creek. The land description of said property is:

a portion of the Southwest Quarter of Section 14, Township 2 South,
Range 7 East, Gila and Salt River Base Meridian, Maricopa County,
Arizona.

I hereby request to be included in the Certificate of Convenience and Necessity area and the franchise area of the Queen Creek Water Company.

Sincerely,



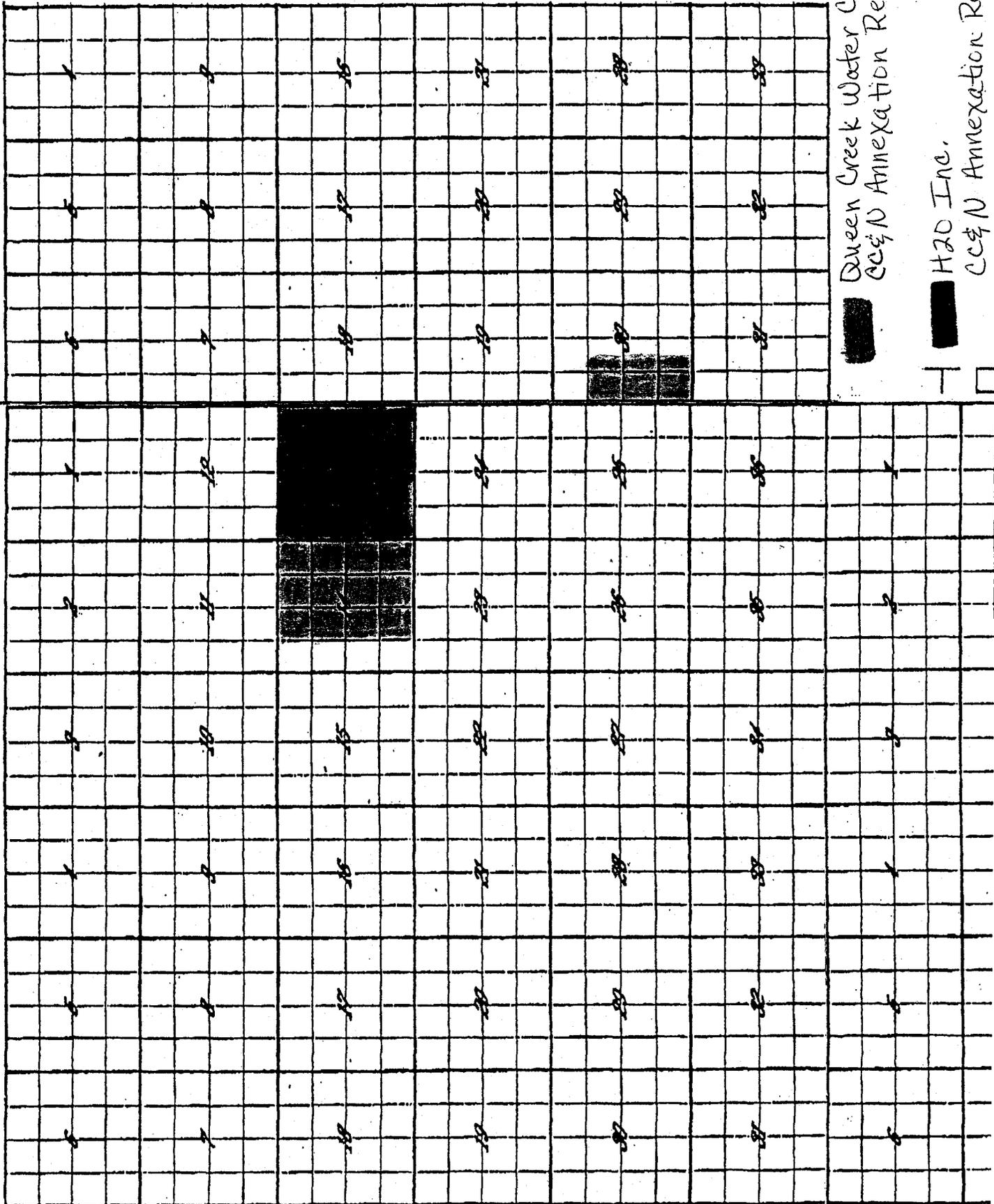
Euell Barnes

EXHIBIT C

RANGE 8 EAST

TOWNSHIP 2 South

RANGE 7 EAST



Queen Creek Water Co.
 CC&N Annexation Request

H2O Inc.
 CC&N Annexation Request