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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
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COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
DOCKETED
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AZ CORP COMMISSION
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IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
AN EXTENSION OF THEIR)
CERTIFICATES OF CONVENIENCE AND)
NECESSITY.)

DOCKET NOS. W-02234A-00-0371
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

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

**DIVERSIFIED WATER UTILITIES, INC.'S NOTICE OF
FILING TESTIMONY OF SCOTT GRAY IN RESPONSE TO PROPOSAL OF
H2O, JOHNSON UTILITIES AND QUEEN CREEK**

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Diversified Water Utilities, Inc., by and through its attorney, hereby file the
Testimony of Scott Gray in Response to Proposal of H2O, Johnson Utilities and Queen Creek.
Respectfully submitted this 8th day of February, 2001.

MARTINEZ & CURTIS, P.C.



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PROOF OF SERVICE AND
CERTIFICATE OF MAILING

I hereby certify that on this 8th day of February, 2001, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

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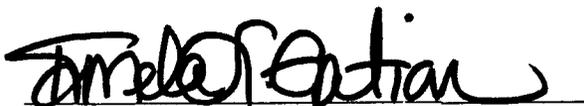
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE)
APPLICATIONS OF H2O, INC. AND)
JOHNSON UTILITIES COMPANY FOR)
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OF DIVERSIFIED WATER UTILITIES,)
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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

TESTIMONY OF
SCOTT GRAY, PRESIDENT OF
DIVERSIFIED WATER UTILITIES, INC.
IN RESPONSE TO PROPOSAL OF
H2O, JOHNSON UTILITIES AND QUEEN CREEK

FEBRUARY 8, 2001

I. INTRODUCTION

1
2 Q: PLEASE STATE YOUR NAME AND RELATIONSHIP TO DIVERSIFIED WATER
3 UTILITIES, INC.

4 A: My name is Scott W. Gray. I am President of Diversified Water Utilities, Inc. ("DWU"),
5 an Arizona corporation.

6
7 Q. ARE YOU THE SAME SCOTT GRAY THAT FILED REBUTTAL TESTIMONY ON
8 JANUARY 30, 2001 IN THIS MATTER?

9 A. Yes.

10
11 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE FILING AND THREE-
12 WAY AGREEMENT SUBMITTED BY JOHNSON UTILITIES, H2O, INC. AND
13 QUEEN CREEK WATER COMPANY?

14 A. Yes.

15
16 Q. DOES THE SUBMITTAL CONSTITUTE A PROPOSAL SETTLEMENT OF THIS
17 MATTER?

18 A. No. H2O, Queen Creek and Johnson Utilities have entered into a three-way agreement,
19 which does not involve staff or DWU, an applicant for the territory encompassed within
20 their agreement. It is not a settlement at all, but rather a three-way alliance dividing up,
21 not only the contested area, but also destroying DWU in the process, and to the detriment
22 of the community served by DWU.
23
24
25
26

1 Q. DID DWU PARTICIPATE IN DISCUSSIONS IN AN EFFORT TO SETTLE THE
2 CONTESTED MATTER?

3 A. DWU was not invited to participate in or otherwise made aware of the discussions
4 between Dr. Griffis, H2O, Queen Creek and Johnson Utilities. These discussions were
5 undertaken without Dr. Griffis, or any other Pinal County representative contacting DWU
6 regarding its operations or systems. The developers/landowners now seeking to form a
7 County Water Improvement District did not approach DWU to discuss the formation of
8 the District or the acquisition of DWU prior to H2O, Queen Creek and Johnson Utilities
9 announcing they had reached an agreement.

10
11 However, after the Procedural Order was issued October 16, 2000 setting the hearing for
12 March 15, 2001, DWU's legal counsel participated in three or four discussions regarding
13 settlement. Because the settlement discussions were conducted under the understanding
14 that details would not be disclosed, I am not at liberty to discuss the details of what was
15 offered by the various parties. However, I will emphasize that a settlement proposal
16 acceptable to DWU, and two of the other parties to this proceeding, was on the table but
17 was unacceptable to the remaining party. I provide this information to assure the
18 Commission that DWU has diligently worked toward and is willing to compromise to
19 avoid unnecessary conflict and to allow this certification proceeding to proceed quickly.

20
21 Q. IS THERE A PROPOSAL UPON WHICH YOU WOULD AGREE TO SUPPORT A
22 SETTLEMENT?

23 A. Yes. We would accept certification of Sections 13, 14, 15, 16 and 23, T3S, R8E and
24 Section 18, T3S, R9E (Bella Vista Farms), as recommended by Staff, as well as Sections
25 28 and 33, T2S, R8E (The Home Place and Ware Farms), as supported by DWU's
26 Rebuttal Testimony filed January 30, 2001. Further, we would agree to voluntarily and

TESTIMONY OF SCOTT GRAY IN RESPONSE TO PROPOSAL
OF H2O, JOHNSON UTILITIES AND QUEEN CREEK

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

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1 automatically divest DWU of these additions if 1) a County Domestic Water
2 Improvement District is formed within the next 60 days; and 2) the District completes
3 acquisition of DWU, excluding the foregoing additions, within 18 months. By complete
4 acquisition, I mean actually paid DWU a sum either agreed to by DWU or as ordered in a
5 final judgment of the Superior Court, entered after trial. DWU would divest itself of
6 these Sections by transferring them to the District or at the Commission's discretion, it
7 would transfer Sections 13, 14, 15, 16 and 23, T3S, R8E and Section 18, T3S, R9E to
8 Johnson Utilities and Sections 28 and 33, T2S, R8E to H2O.

9
10
11 Q. WHY DO YOU THINK YOUR PROPOSAL IS IN THE PUBLIC INTEREST?

12 A. Our proposal addresses the concerns raised in our Rebuttal Testimony and provides the
13 community we service with greater resources and quality service. It provides DWU with
14 an opportunity to loop its system in the northwest; it provides DWU the opportunity to
15 serve significant subdivisions in Ware Farms and The Home Place that are on the cusp of
16 development; and it allows Bella Vista Farms to have all of its property served by one
17 water provider. Further, it will address the concerns we raised regarding stretching the
18 resources of H2O and Johnson Utilities too thin as DWU will serve these areas in the
19 short term allowing H2O and Johnson Utilities to concentrate on other active
20 development areas. Finally, if the District is formed and operational at the end of 18
21 months, it allows these areas the option of being served by a public service corporation
22 regulated by the Commission or the County Domestic Water Improvement District.

23
24 On the other hand, DWU's proposal also provides a definitive date by which the County
25 Domestic Water Improvement District must be formed and also complete its acquisition
26 of DWU, providing certainty where confusion would otherwise exist. The proposal

1 provides a reasonable opportunity for the landowners who are seeking to form a District
2 to proceed without prejudicing the landowners, DWU, H2O or Johnson Utilities.

3
4 Q. IS THIS AN OPEN ENDED OFFER THAT MAY BE ACCEPTED AT ANY TIME?

5 A. No. The offer will automatically expire when Rejoinder Testimony is due (March 6,
6 2001). We also reserve the right to rescind the offer at any time. Of course, the offer is
7 contingent upon it being reduced to writing in a mutually agreed upon format and being
8 accepted by the Commission. Further, any agreement between the water companies
9 should make every effort to address any concerns of Staff regarding the proposal.

10
11 Q. WHY ISN'T YOUR PROPOSAL CONTINGENT SOLELY UPON THE FORMATION
12 OF THE DISTRICT?

13 A. Formation does not authorize a county water improvement district to serve within
14 DWU's certificated area. A.R.S. § 48-909(D) specifically requires the acquisition of an
15 existing certificated entity before a District may serve within the certificated area. It is
16 one thing for the petitioners to secure the affirmative votes of two or three supervisors
17 approving the formation of the District, and an entirely different matter for the District,
18 once formed, to get into the water business.

19
20 Q. DO YOU HAVE CONCERNS REGARDING THE VIABILITY OF THE DISTRICT?

21 A. There is no assurance that the District will be able to finance the acquisition of DWU. At
22 the request of the County, DWU met with a group of developers/landowners involved in
23 the formation of the District to address Dr. Griffis' stated desire to terminate the
24 contested proceedings before this Commission. These individuals indicated they did not
25 plan to actually run the water system, but intended to contract with H2O, Johnson
26

1 Utilities or Queen Creek to operate the system. This raises the question as to whether the
2 District is being used by one or more of these other utilities as a method of controlling
3 DWU's service territory. Further, these developers/landowners had done no evaluation
4 of the District's funding capability or any valuation of DWU.

5
6 Despite representations in correspondence provided to Commission Staff in December of
7 2000 that the landowners had already filed petitions to form a District, no petition was
8 actually submitted until early January 2001. That petition was subsequently withdrawn
9 and a new petition circulated. That petition, likewise, was filed and withdrawn. A third
10 petition was circulated and filed last week and the Board of Supervisors has noticed a
11 hearing on the petition for February 28, 2001 at 9:30 a.m. to determine whether the
12 formation of the District will promote the public convenience, necessity or welfare. Even
13 if the District is formed, there is no assurance the District will ever acquire DWU or
14 commence operations. The Commission should not even consider the "District".
15 Further, the Commission should not consider the present agreement as a "settlement" in
16 any way. There is no assurance that once certificates were issued to H2O, Johnson
17 Utilities and Queen Creek the District would not simply disappear having served its
18 purpose of precluding DWU from expanding service areas contiguous to its existing
19 certificated area and thwarting the public interest, all as more fully explained in DWU's
20 Rebuttal Testimony filed January 30, 2001.

21
22 Q. DOES THE AGREEMENT PRESENT ANY OTHER CONCERNS THAT YOU
23 WOULD LIKE TO MENTION?

24 A. First, none of the concerns raised by Staff regarding Johnson Utilities fitness to serve are
25 addressed.
26

1 Second, the agreement only exasperates the difficulties to be faced by H2O and Johnson
2 Utilities in attempting to simultaneously meet the immediate needs of development
3 springing up throughout their certificated areas. Johnson Utilities' poor track record with
4 regard to ADEQ compliance is well chronicled by the Commission Staff. Similarly,
5 H2O suffered significant financial difficulties throughout the 90's. DWU is not arguing
6 that these entities are not fit and proper to hold their current certificates. However, a
7 different analysis is required to determine whether they are fit and proper to serve the
8 extensive areas for which they seek certification under their present applications and
9 under this three-way agreement.

10
11 Third, the agreement deals with territories and issues that are raised for the first time
12 through this three-way agreement such as the extension of Queen Creek's certificated
13 area and the deletion of areas from H2O's certificate and the significant increase in the
14 areas sought to be encompassed within Johnson Utilities' sewer CC&N.

15
16 Fourth, Staff has concluded that there is no present need to serve much of the area that
17 would be certificated to Johnson Utilities under the three-way agreement. Obviously, the
18 mere fact that Queen Creek and H2O now support Johnson Utilities' application for a
19 certificate does not create a public need for the service.

20
21 Fifth, the agreement does not require the parties to obtain county franchises or ADEQ
22 approvals to construct as a condition to retaining their certificates. All of these issues
23 constitute grounds for Commission declining to approve the three-way agreement, which
24 has been submitted by H2O, Johnson Utilities and Queen Creek.

25
26

1 Q. DO YOU HAVE ANY OTHER COMMENT ON THE AGREEMENT?

2 A. We call the Commission's attention to paragraph 10 prohibiting the utilities from
3 acquiring wellsites within the other's certificated area, absent consent. Obviously, the
4 predatory practice of Johnson Utilities, which is the subject of Docket Nos. W-02234A-
5 00-0775; WS-02987A-00-0775; and W-02859A-00-0775, is also of concern to H2O and
6 Queen Creek. Apparently, it is only DWU that should remain subject to such improper
7 action by another public service corporation.
8

9 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY ON THE SETTLEMENT
10 AGREEMENT?

11 A. Yes. However, it should be noted that DWU, like Staff, has had a very limited
12 opportunity to review the agreement and consider its ramifications. If the agreement is
13 not summarily rejected, we anticipate that it will be closely scrutinized at the March 15,
14 2001 hearing.
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