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MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
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KRISTIN K. MAYES  
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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
**DOCKETED**

DATE: JANUARY 25, 2008

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DOCKET NOS: W-02859A-04-0844

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Opinion and Order on:

DIVERSIFIED WATER UTILITIES, INC.  
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

FEBRUARY 4, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

FEBRUARY 12, 2008 and FEBRUARY 13, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF  
DIVERSIFIED WATER UTILITIES, INC. TO  
EXTEND ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN PINAL COUNTY,  
ARIZONA.

DOCKET NO. W-02859A-04-0844

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: July 30, 2007  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes<sup>1</sup>  
APPEARANCES: Mr. William P. Sullivan, CURTIS, GOODWIN,  
SULLIVAN, UDALL & SCHWAB, P.L.C., on behalf  
of Diversified Water Utilities, Inc.; and  
Mr. Kevin Torrey, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

On November 24, 2004, Diversified Water Utilities, Inc. ("Diversified") filed with the Arizona Corporation Commission ("Commission") an application to extend its Certificate of Convenience and Necessity ("CC&N") for water utility services in Pinal County either by amending Decision No. 63690 (September 4, 2001), as amended,<sup>2</sup> or by treating the filing as a new application. After a correction filed on December 9, 2004, Diversified's application requested to add to its CC&N area all of Sections 13, 14, 15, and 23 and that portion of Section 16 east of the railroad tracks, all in Township 3 South, Range 8 East, Pinal County. Staff chose to treat Diversified's application as a new application for a CC&N extension.

From December 3, 2004, through June 30, 2005, Diversified's application competed with an

<sup>1</sup> Administrative Law Judge Dwight D. Nodes conducted the hearing in this matter. The Recommended Opinion and Order was drafted by Administrative Law Judge Sarah N. Harpring.

<sup>2</sup> Decision No. 63690 has been amended by Decision No. 64062 (October 4, 2001) and Decision No. 65840 (April 22, 2003).

1 application for CC&N extension filed by Johnson Utilities Company ("Johnson") to extend its  
2 CC&N for water utility service into Sections 13 and 23.

3 On June 30, 2005, Diversified and Johnson filed a Joint Settlement Statement and a Letter of  
4 Mutual Understanding, Cooperation, and Settlement, under which Diversified and Johnson agreed,  
5 among other things, that Diversified would seek to extend its CC&N for water utility services to  
6 include Sections 13, 14, and 15 and that portion of Section 16 east of the railroad tracks and that  
7 Johnson would seek to extend its CC&N for water utility services to include Section 23.<sup>3</sup>

8 On November 30, 2005, Diversified filed an Amended and Supplemented Application to  
9 request extension of its CC&N only into Sections 13, 14, and 15 and that portion of Section 16 east  
10 of the railroad tracks.

11 On December 12, 2005, a Procedural Conference was held at which Diversified requested to  
12 have the matter for its application continued for 180 days to allow additional time to obtain requests  
13 for service from landowners. By a Procedural Order issued on December 13, 2005, the continuance  
14 was granted, and the applicable time clock requirements were suspended until further Order.

15 On September 21, 2006, in Decision No. 68960, which granted Johnson a CC&N extension  
16 for water utility service as to Section 23, the Commission also ordered Diversified to file, within 60  
17 days of the Decision's effective date, a statement indicating whether it wished to pursue the matter  
18 for its application.

19 In a filing made on November 15, 2006, Diversified indicated that it intended to proceed with  
20 its application, that it had recently received a request for service from an additional landowner, and  
21 that it was in the process of amending its application again to request that its CC&N be extended only  
22 to those areas for which it had received requests for service.

23 On March 27, 2007, Diversified filed its Second Amended Application, in which it requested  
24 to add to its CC&N area only Section 13 and the eastern one-half of Section 14.

25  
26 <sup>3</sup> The dockets for the Diversified application matter and the Johnson application matter proceeded as consolidated from  
27 March 2, 2005, until December 13, 2005, when the two matters were bifurcated for purposes of processing and hearing.  
28 Johnson filed an Amended Application and Request for Tariff Approval, consistent with the Settlement, on October 7,  
2005. The Commission granted Johnson a CC&N extension for Section 23 in Decision No. 68960 (September 21, 2006).  
The consolidated dockets were severed altogether by a Procedural Order issued on December 28, 2006.

1 On April 24, 2007, Staff filed a Sufficiency Letter providing that Diversified's Second  
2 Amended Application met the sufficiency requirements outlined in the A.A.C.

3 On April 30, 2007, a Procedural Order was issued scheduling a hearing for July 30, 2007, and  
4 establishing other procedural deadlines.

5 On June 26, 2007, Diversified filed proof of publication and of mailing notice to the two  
6 property owners for Section 13 and the eastern one-half of Section 14.

7 On June 29, 2007, Staff filed its Staff Report recommending approval of Diversified's Second  
8 Amended Application, subject to conditions.

9 On July 13, 2007, Diversified filed Notice of Support for the Staff Report.

10 On July 30, 2007, an evidentiary hearing was held before a duly authorized Administrative  
11 Law Judge of the Commission at its offices in Phoenix, Arizona. Diversified and Staff appeared  
12 through counsel and presented evidence and testimony. No members of the public appeared to  
13 provide comment. During the hearing, Diversified and Staff were directed to file a joint late-filed  
14 exhibit related to treatment of hook-up fees and advances in aid of construction ("AIAC"), and  
15 Diversified was directed to file a late-filed exhibit regarding the developer's plans for developing the  
16 common areas within the area requested.

17 On September 21, 2007, Diversified filed an Affidavit Regarding Turf and Effluent.

18 On October 11, 2007, a Procedural Order was issued directing Staff to file a response to  
19 Diversified's Affidavit Regarding Turf and Effluent, with any appropriate recommendation, by  
20 October 22, 2007. The Procedural Order also ordered Staff and Diversified to file the joint late-filed  
21 exhibit concerning hook-up fees and AIAC by November 1, 2007.

22 On October 22, 2007, Staff filed a Response to Diversified's Affidavit Regarding Turf and  
23 Effluent.

24 On November 1, 2007, counsel for Staff and Diversified initiated a teleconference with a duly  
25 authorized Administrative Law Judge of the Commission to request that the deadline for the joint  
26 late-filed exhibit concerning hook-up fees and AIAC be extended to November 13, 2007, because  
27 they had not yet been able to reach a resolution of the issue. A Procedural Order to that effect was  
28 issued on the same day.

1 On November 13, 2007, Diversified filed a late-filed exhibit regarding hook-up fees and  
2 AIAC, in which Diversified stated that it intended to request termination of its hook-up fee tariff.

3 On November 16, 2007, a Procedural Order was issued directing Staff to file, by November  
4 26, 2007, a response to Diversified's late-filed exhibit and any new recommendations resulting from  
5 Diversified's position expressed in the late-filed exhibit.

6 On November 27, 2007, Staff filed a response to Diversified's late-filed exhibit.

7 On December 7, 2007, Diversified filed a reply to Staff's response.

8 On December 13, 2007, by Procedural Order, Staff was directed to file, by December 27,  
9 2007, a response to Diversified's December 7, 2007, filing.

10 On December 27, 2007, Staff filed a document to clarify Staff's prior recommendations and  
11 respond to Diversified's December 7, 2007, filing.

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, Diversified is an Arizona public  
17 service corporation providing water utility service in portions of Pinal County, Arizona. Diversified  
18 was originally granted its CC&N to provide water utility service in Decision No. 59133 (June 27,  
19 1995),<sup>4</sup> and has subsequently been granted one conditional CC&N extension, which was later  
20 rendered null and void due to Diversified's failure to comply with the conditions in the Decision.<sup>5</sup>

21 2. On November 24, 2004, Diversified filed with the Commission an application to  
22 extend its CC&N in Pinal County either by amending Decision No. 63960 (September 4, 2001), as  
23 amended, or by treating the filing as a new application. After a correction filed by Diversified on  
24 December 9, 2004, Diversified's application requested to add to its CC&N all of Sections 13, 14, 15,  
25 and 23 and that portion of Section 16 east of the railroad tracks, all in Township 3 South, Range 8  
26

27 <sup>4</sup> Decision No. 59133 transferred the CC&N of Quail Hollow Water Company to Quail Hollow Water Company, Inc.,  
which subsequently changed its name to Diversified Water Utilities, Inc.

28 <sup>5</sup> In Decision No. 63960 (September 4, 2001), Diversified's CC&N was conditionally extended to include Section 18,  
Township 3 South, Range 9 East, Pinal County, referred to as "Parcel 24" in the Decision.

1 East, Pinal County.

2 3. Staff has treated Diversified's application as a new application for a CC&N extension.

3 4. From December 3, 2004, through June 30, 2005, Diversified's application competed  
4 with an application for CC&N extension filed by Johnson to extend its CC&N for water utility  
5 service into Sections 13 and 23.

6 5. On June 30, 2005, Diversified and Johnson filed a Joint Settlement Statement and a  
7 Letter of Mutual Understanding, Cooperation, and Settlement ("Settlement"), under which  
8 Diversified and Johnson agreed, among other things, that Diversified would seek to extend its CC&N  
9 for water utility services by adding only Sections 13, 14, and 15 and that portion of Section 16 east of  
10 the railroad tracks and that Johnson would seek to extend its CC&N for water utility services by  
11 adding only Section 23.

12 6. On November 30, 2005, Diversified filed an Amended and Supplemented Application  
13 to request extension of its CC&N area only into Sections 13, 14, and 15 and that portion of Section  
14 16 east of the railroad tracks.

15 7. On September 21, 2006, in Decision No. 68960, the Commission granted Johnson a  
16 CC&N extension for water utility services as to Section 23.

17 8. On March 27, 2007, Diversified filed its Second Amended Application, in which it  
18 requested extension of its CC&N area only into Section 13 and the eastern one-half of Section 14  
19 ("CC&N extension area"). Diversified included as exhibits to its Second Amended Application an  
20 April 26, 2005, letter from the Arizona State Land Department ("ASLD") and an October 24, 2006,  
21 letter from Wolfkin Farms, L.L.C. ("Wolfkin"). The letter from the ASLD states that 325.46 acres of  
22 Section 14 is state trust land, that the ASLD has determined that it is in the best interest of the state  
23 trust land to be included in a certificated area for water delivery, and that the ASLD desires to remain  
24 neutral as to the water provider. The letter from Wolfkin states that Wolfkin is the owner of Section  
25 13 and formally requests that Diversified provide water services for the approximately 640-acre  
26 Section for a project that will consist of approximately 2,100 lots to be developed in multiple phases.

27 9. On June 29, 2007, Staff filed its Staff Report recommending approval of Diversified's  
28 Second Amended Application, subject to certain conditions.

1           10.     Diversified's current CC&N area encompasses nine square miles and serves a  
2 community approximately 10 miles south of Apache Junction in Pinal County. Diversified's existing  
3 water system consists of two wells, one at 200 gallons per minute ("GPM") and one at 1,200 GPM;  
4 three storage tanks with a total capacity of 1.22 million gallons; and a distribution system serving  
5 approximately 1,060 service connections as of July 30, 2007. Diversified's existing water system is  
6 approximately one mile from the requested CC&N extension area, which abuts the southern border of  
7 Diversified's current CC&N area.

8           11.     The CC&N extension area would add one and one-half square miles of certificated  
9 area to provide service to a proposed development known as the Bella Vista project and a parcel of  
10 state trust land owned by the State of Arizona and administered by the ASLD.

11          12.     According to Staff, Diversified proposes to serve the CC&N extension area with a  
12 new independent water system, to be constructed at a cost over five years of \$5,546,666, and projects  
13 that it will serve 200 new customers in the first year and 1,300 new customers by the fifth year.  
14 Diversified's President, Scott Gray, testified that Section 13 will ultimately be developed into 2,167  
15 residential lots. (Tr. at 13, lines 17-21; Tr. at 20, lines 18-23.)

16          13.     Staff has determined that Diversified's proposed water system will have adequate well  
17 production and storage capacity to serve the CC&N extension area within a conventional five-year  
18 planning period and that Diversified can reasonably be expected to develop additional well  
19 production and storage capacity as required in the future. Staff has also determined that the proposed  
20 water plant facilities and the estimated costs for those facilities are reasonable, although Staff has not  
21 made a determination as to the proposed water plant facilities' "used and useful" status and has stated  
22 that no particular treatment should be inferred for rate-making or rate-base purposes.

23          14.     Diversified is an Arizona corporation in good standing with the Commission's  
24 Corporations Division.

25          15.     According to Staff, a check with the Compliance Section of the Commission's  
26 Utilities Division revealed no delinquent compliance items.

27          16.     According to Staff, Diversified has an approved backflow prevention tariff that  
28 became effective on March 29, 1997. Diversified also has an approved curtailment tariff that became

1 effective on October 22, 2004.

2 17. Diversified's current Pinal County franchise includes Sections 13 and 14.

3 18. Mr. Gray testified that Diversified has four full-time employees, two full-time service  
4 people in its service area who are certified operators, and an office in the service area. (Tr. at 17,  
5 lines 2-6.) In addition, Mr. Gray testified that the CC&N extension area is in Diversified's geological  
6 area and falls from it as a natural gravity feed. (Tr. at 17, lines 16-17.) Mr. Gray also testified that  
7 Diversified has already engineered a line and done survey work to bring the CC&N extension area  
8 into Diversified's water system. (Tr. at 17, lines 14-16.)

9 **Need for Service in the CC&N Extension Area**

10 19. Wolfkin has specifically requested that Diversified provide water utility service for  
11 Section 13, to serve the development planned for that area.

12 20. The ASLD has not specifically requested that Diversified provide water utility service  
13 for the eastern one-half of Section 14, but has expressed a desire to have the property included within  
14 a certificated area for water delivery.

15 21. Mr. Gray testified that the Bella Vista project will ultimately include Sections 9, 10,  
16 13, 14, 15, and 23 and part of Section 16. (Tr. at 43, lines 5-6; Tr. at 52, lines 1-8.) Mr. Gray also  
17 testified that Diversified is already working with developers to the north of Section 14 and is in  
18 discussions with the owners of Section 15 and of the western one-half of Section 14. (Tr. at 45, lines  
19 13-18.) The state trust land at issue (the eastern one-half of Section 14) abuts Section 13 (included in  
20 the CC&N extension area) to the east, Section 11 (already included in Diversified's CC&N area) to  
21 the north, the western one-half of Section 14 (for which Diversified is currently in discussions with  
22 developers) to the west, and Section 23 (recently included in Johnson's CC&N area) to the south.

23 22. In the Settlement, Diversified and Johnson agreed to delineated water service planning  
24 areas for each other, within which the other has agreed not to seek to provide water service.  
25 Diversified's water service planning area includes, among other land, all of Sections 13, 14, and 15  
26 and that portion of Section 16 east of the railroad tracks.

27 23. Staff testified that, as a practical matter, no one else is going to attempt to serve the  
28 Bella Vista project area because only Diversified and Johnson have facilities located so that they can

1 economically serve the area. (Tr. at 64, lines 13-17 and 23-25; Tr. at 65, lines 1-7.)

2       24. Staff testified that granting the CC&N extension as to the state trust land would add  
3 value to the state trust land, if the State were ever to trade or sell the land. (Tr. at 67, lines 8-14.)  
4 Staff further testified that it is Staff's policy to recommend approval of CC&N extensions into state  
5 trust land when requested, (Tr. at 69, lines 18-21), even if there has not been a specific request for  
6 service to the state trust land, (Tr. at 70, lines 5-10).

7 **Wastewater Service for the CC&N Extension Area**

8       25. According to the Staff Report, Johnson is authorized to provide wastewater utility  
9 service in Section 13, but no one is authorized to provide wastewater utility service for the Section 14  
10 state trust land property.

11       26. The Settlement provides that Johnson will apply to extend its wastewater CC&N for  
12 all areas within Diversified's current or future CC&N area for which Johnson has received or  
13 receives a request for wastewater service.

14       27. Mr. Gray testified that having a sewer distribution plant and wastewater treatment in  
15 Diversified's CC&N area is a relatively new development, as sewer in the area has traditionally been  
16 provided through septic systems. (Tr. at 54, lines 23-25; Tr. at 55, lines 1-2.)

17 **Compliance with Arizona Department of Environmental Quality ("ADEQ") Requirements**

18       28. As of an ADEQ inspection conducted on April 17, 2007, Diversified's public water  
19 system was in compliance with the operation, maintenance, monitoring, and reporting requirements  
20 of the ADEQ Safe Drinking Water Rules.

21       29. Diversified has indicated that the arsenic levels for its two existing wells are 2 parts  
22 per billion ("ppb") and 3.3 ppb. This is well below the current United States Environmental  
23 Protection Agency maximum contaminant level ("MCL") of 10 ppb.

24       30. Because the wells that would serve the CC&N extension area have not yet been  
25 constructed, the arsenic levels for those wells cannot yet be determined. Staff has indicated that  
26 arsenic levels for the other water utilities in the region are well below the 10 ppb MCL.<sup>6</sup> According

27 \_\_\_\_\_  
28 <sup>6</sup> Staff stated that Sun Valley Farms Unit VI Water Company has shown arsenic levels of 3.3 ppb; H2O, Inc. has shown  
arsenic levels ranging from 2 to 3 ppb; and Johnson has shown arsenic levels ranging from 2 to 7 ppb.

1 to Staff, Diversified has stated that the developer will be responsible for funding arsenic treatment if  
2 arsenic treatment is required for the new wells.

3 31. According to the Staff Report, Diversified has not yet obtained an Approval to  
4 Construct (“ATC”) from ADEQ for the water plant facilities needed to serve the CC&N extension  
5 area. Staff has recommended that Diversified be required to file with Docket Control, as a  
6 compliance item in this docket, within two years after the effective date of this Decision, a copy of  
7 the ATC for the water plant facilities needed to serve the first development in the requested CC&N  
8 extension area.

9 **Compliance with Arizona Department of Water Resources (“ADWR”) Requirements**

10 32. ADWR has issued Diversified a Physical Availability Demonstration for an area that  
11 includes the CC&N extension area.

12 33. According to Staff, Diversified is located within the Phoenix Active Management  
13 Area and is in compliance with ADWR’s reporting and conservation requirements.

14 34. Staff has recommended that Diversified be required to file with Docket Control, as a  
15 compliance item in this docket, within two years after the effective date of this Decision, a copy of  
16 the developer’s Certificate of Assured Water Supply for the first subdivision in the CC&N extension  
17 area.

18 **Hook-Up Fees and AIAC**

19 35. Diversified has an off-site facilities hook-up fee tariff that was approved by the  
20 Commission in Decision No. 61580 (March 15, 1999).

21 36. In its Second Amended Application, Diversified stated that it intended to fund  
22 construction of the infrastructure needed to serve the CC&N extension area through hook-up fees and  
23 AIAC.

24 37. During the evidentiary hearing, Mr. Gray was unable to explain how Diversified  
25 would handle hook-up fees when the developer had also contributed AIAC. (Tr. at 27-30.)

26 38. On November 13, 2007, Diversified filed a late-filed exhibit regarding hook-up fees  
27 and AIAC. In this late-filed exhibit, Diversified stated that Diversified had consulted with Staff  
28 regarding the operation and impact of Diversified’s hook-up fee tariff related to developers’ payment

1 of AIAC pursuant to a Main Extension Agreement (“MXA”); had concluded that the hook-up fee  
2 tariff was no longer appropriate for Diversified; and would file a separate application to terminate its  
3 hook-up fee tariff, thereby rendering the issue moot for this proceeding. Diversified explained that  
4 the hook-up fee tariff was obtained when Diversified had fewer than 100 customers and was  
5 experiencing major growth as the result of lot-splitting activities, whereas development within  
6 Diversified’s certificated area is now primarily through formal subdivisions involving developers  
7 who are able and willing to pay, under MXAs that comply with A.A.C. R14-2-406, for the plant to  
8 service the subdivisions/developments. Diversified further stated that it believes it is unnecessary to  
9 address the hook-up fee/AIAC issue in this matter as it will be moot upon termination of  
10 Diversified’s hook-up fee tariff.

11 39. On November 27, 2007, Staff filed a response to Diversified’s November 13, 2007,  
12 filing, stating that Staff’s recommendations in the Staff Report are not affected by Diversified’s new  
13 position; that Staff believes that it may be appropriate for Diversified to terminate its hook-up fee  
14 tariff because it may help Diversified build rate base; and that although Staff does not generally make  
15 recommendations regarding capital structure and financing within the context of CC&N extensions,  
16 Staff recommends that Diversified increase its rate base by having its future MXAs contain refund  
17 provisions in excess of those in A.A.C. R14-2-406(D)<sup>7</sup> or by issuing equity to finance extensions.

18 40. On December 7, 2007, Diversified filed a reply to Staff’s response, suggesting  
19 alternate refund provisions for future MXAs.<sup>8</sup>

20 41. In a filing on December 27, 2007, Staff stated that because Staff has not fully  
21 examined the many various potential approaches to capital structure and financing and their potential  
22 consequences for Diversified’s ratepayers, Staff does not feel that it would be appropriate to make  
23 specific recommendations on these issues, although Staff believes that Diversified must begin to  
24 increase the percentage of equity in its capital structure.

25 42. Staff’s concerns described in Finding of Fact No. 41 are well founded and should be

26 <sup>7</sup> Staff suggested that the refund provision in future MXAs should exceed 20% of the total gross annual revenue from the  
27 main extension and that refunds should be made until the entire balance is refunded.

28 <sup>8</sup> Diversified suggested that the refund provision in future MXAs should be 15% to be paid until (1) 25 years have  
passed, (2) full repayment of the advance, or (3) the amount of refunds paid equals the current net book value of the plant  
installed under the MXA.

1 heeded. Rather than adopting in this Decision a requirement related to the refund provisions in  
2 Diversified's future MXAs, we encourage Staff and Diversified to continue discussions concerning  
3 Diversified's increasing the percentage of equity in its capital structure. We also instruct Staff to  
4 keep this goal in mind when reviewing Diversified's future MXAs.

5 **Turf and Effluent Use in the CC&N Extension Area**

6 43. According to Diversified, Wolfkin has confirmed to Diversified that the housing to be  
7 built in Section 13 is primarily "starter homes" intended for first-time home buyers; that the  
8 development plan for Section 13 calls for "landscaping consistent with the desert environment" and  
9 does not include golf courses, lakes, or other water-intensive features; and that turf use in Section 13  
10 will be limited in parks and common areas. Diversified has also stated that the development plan for  
11 Section 13 contains a public school site that can be expected to have playing field areas.

12 44. According to Diversified, Diversified and Wolfkin support the use of effluent on turf  
13 where practicable but oppose the Commission's including a generic requirement mandating effluent  
14 use in this Decision because there is limited opportunity to use effluent within the development in  
15 Section 13; there is currently insufficient information available to evaluate the availability of effluent  
16 or the practicability of using effluent within the development in Section 13; and Diversified does not  
17 produce or own effluent.

18 45. Diversified has proposed that, rather than including a provision mandating effluent  
19 use, the Commission include in this Decision the following language, which Diversified has stated is  
20 also supported by Wolfkin:

21 Before Company initiates service within the extension area to a "Turf-Related  
22 Facility," as defined by the then applicable Management Plan for the Pinal  
23 Active Management Area,<sup>1</sup> involving the delivery of groundwater to the  
24 facility, Company shall secure from the entity requesting service a written  
25 statement that use of effluent has been investigated and explaining why use of  
26 effluent at the Turf-Related Facility is impracticable or inadequate.

27 <sup>1</sup> The Third Management Plan for the Pinal Active Management Area  
28 provides, in part: "Turf-related facility" means any facility, including

1 cemeteries, golf courses, parks, schools or common areas of housing  
2 developments, with a water-intensive landscaped area of 10 or more acres.

3 46. Staff has stated that it does not have a position on the arguments described in Finding  
4 of Fact No. 44 related to Diversified's and Wolfkin's opposition to the Commission's mandating  
5 effluent use in this Decision. Staff has also stated that, if the Commission accepts the arguments  
6 described in Finding of Fact No. 44, Staff is of the opinion that the language proposed by Diversified,  
7 which is set forth in Finding of Fact No. 45, is acceptable.

8 47. The language proposed by Diversified would not necessarily result in the conservation  
9 of groundwater. Rather, as it is phrased only in terms of the impracticability or inadequacy of  
10 effluent use, it seems to assume that groundwater use would be necessary to serve any "turf-related  
11 facilities" created in the CC&N extension area. The language also fails to require Diversified to  
12 determine whether an assertion as to impracticability/inadequacy is valid and fails to establish any  
13 standard for Diversified to apply in determining whether effluent use is indeed impracticable or  
14 inadequate.

15 48. In recent months, the Commission has become increasingly concerned about the  
16 prolonged drought in Central Arizona. Therefore, we believe Diversified should be required to  
17 conserve groundwater and that Diversified should be prohibited from selling groundwater for the  
18 purpose of irrigating any future golf courses within the certificated expansion area or any ornamental  
19 lakes or water features located in the common areas of the proposed new developments within the  
20 certificated expansion area.

#### 21 **Compliance with Tax Laws**

22 49. Because an allowance for property tax expense is included in Diversified's rates and  
23 will be collected from its customers, the Commission seeks assurances from Diversified that any  
24 taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to  
25 the Commission's attention that a number of water companies have been unwilling or unable to fulfill  
26 their obligation to pay the taxes that were collected from ratepayers, some for as many as 20 years. It  
27 is reasonable, therefore, that as a preventive measure Diversified shall annually file, as part of its  
28 annual report, an affidavit with the Utilities Division attesting that Diversified is current in paying its

1 property taxes in Arizona.

2 **Staff's Recommendation for Approval/Denial**

3 50. Staff has determined that Diversified is fit and proper to provide service to the  
4 proposed CC&N extension area.

5 51. Staff has recommended that Diversified's CC&N be extended as requested,  
6 conditioned on Diversified's timely filing of the documents described in Finding of Fact Nos. 31 and  
7 34, and that this Decision granting Diversified's CC&N extension become null and void after due  
8 process should Diversified fail to meet these conditions.

9 **CONCLUSIONS OF LAW**

10 1. Diversified is a public service corporation within the meaning of Article XV of the  
11 Arizona Constitution and A.R.S. § 40-281 *et seq.*

12 2. The Commission has jurisdiction over Diversified and the subject matter of the  
13 application.

14 3. Notice of the application was provided in accordance with the law.

15 4. For the reasons described in Finding of Fact Nos. 19-24, there is a public need and  
16 necessity for water utility services in the CC&N extension area described and shown in Exhibit A.

17 5. Diversified is a fit and proper entity to receive an extension of its CC&N for water  
18 utility services to include the CC&N extension area described and shown in Exhibit A.

19 6. Staff's recommendations set forth in Finding of Fact Nos. 31 and 34 are reasonable  
20 and should be adopted.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of Diversified Water Utilities, Inc. for an  
23 extension of its Certificate of Convenience and Necessity to provide water utility service to include  
24 the area described and shown in Exhibit A, attached hereto and incorporated herein by reference, is  
25 hereby approved subject to the conditions and requirements outlined in the following ordering  
26 paragraphs.

27 IT IS FURTHER ORDERED that Diversified Water Utilities, Inc. shall charge its existing  
28 rates and charges on file with the Commission for the extension area granted herein, until further

1 Order of the Commission.

2 IT IS FURTHER ORDERED that Diversified Water Utilities, Inc. shall file with Docket  
3 Control, as compliance items in this docket, within two years after the effective date of this Order:

4 1. A copy of the Arizona Department of Environmental Quality Approval to Construct  
5 for the water plant facilities needed to serve the first development in the extension area granted  
6 herein, and

7 2. A copy of the developer's Arizona Department of Water Resources Certificate of  
8 Assured Water Supply for the first subdivision in the extension area granted herein.

9 IT IS FURTHER ORDERED that if Diversified Water Utilities, Inc. fails to comply with the  
10 conditions in the preceding ordering paragraph within the required timeframe, the extension to its  
11 Certificate of Convenience and Necessity conditionally granted herein shall become null and void,  
12 after due process.

13 IT IS FURTHER ORDERED that, in light of the ongoing drought conditions in central  
14 Arizona and the need to conserve groundwater, Diversified Water Utilities, Inc. is prohibited from  
15 selling groundwater for the purpose of irrigating any future golf courses within the certificated  
16 expansion area or any ornamental lakes or water features located in the common areas of the  
17 proposed new developments within the certificated expansion area.

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1 IT IS FURTHER ORDERED that Diversified Water Utilities, Inc. shall annually file, as part  
2 of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its  
3 property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6  
7

8 CHAIRMAN

COMMISSIONER

9  
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
13 Executive Director of the Arizona Corporation Commission,  
14 have hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of Phoenix,  
16 this \_\_\_\_ day of \_\_\_\_\_, 2008.

17 \_\_\_\_\_  
18 DEAN S. MILLER  
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

22 SNH:db

1 SERVICE LIST FOR: DIVERSIFIED WATER UTILITIES, INC.

2 DOCKET NO.: W-02859A-04-0844

3  
4 William P. Sullivan  
5 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, PLC  
6 501 East Thomas Road  
7 Phoenix, AZ 85012  
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13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director  
15 Utilities Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington Street  
18 Phoenix, AZ 85007

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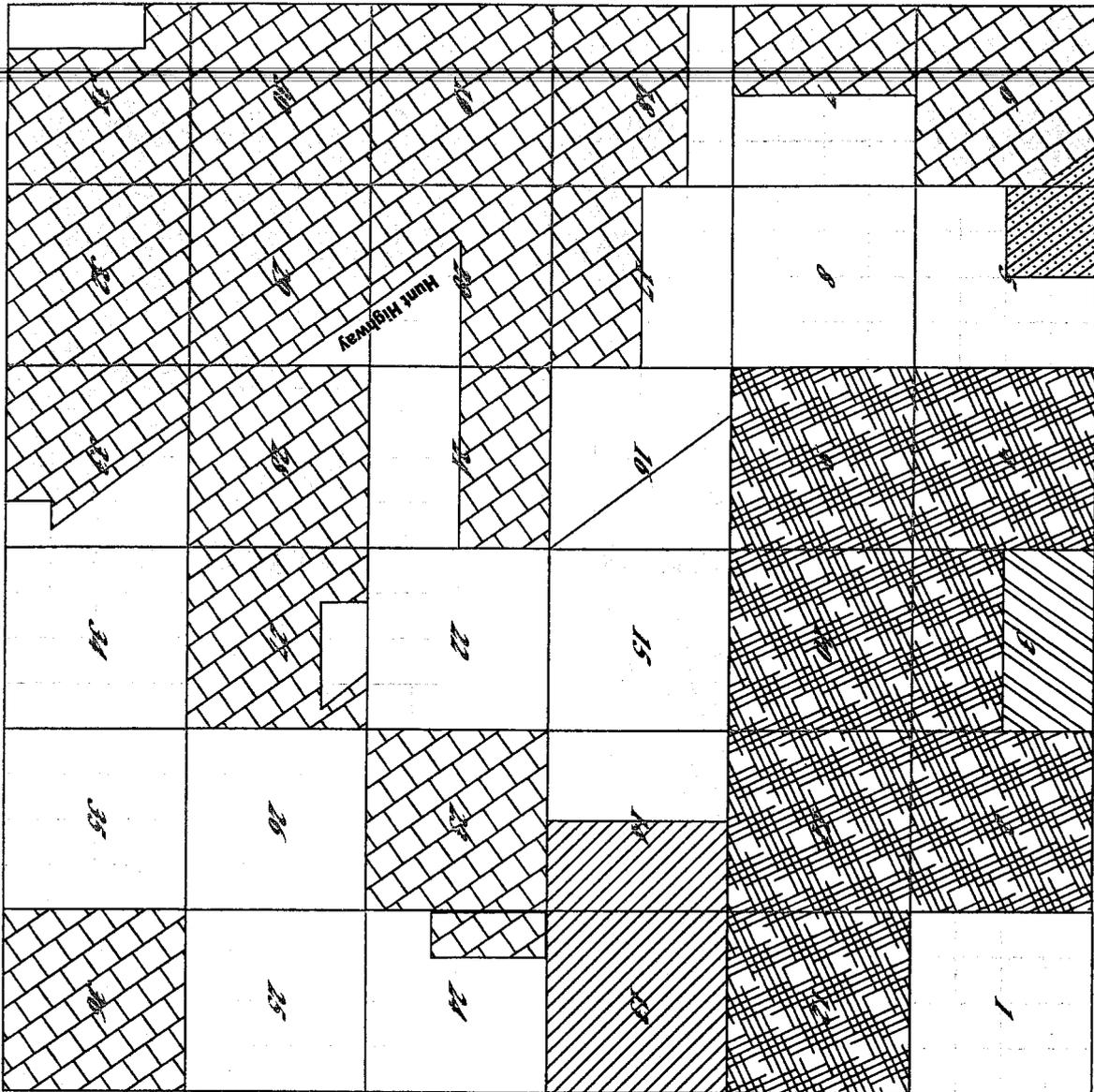
EXHIBIT A

LEGAL DESCRIPTION

Section 13, Township 3 South, Range 8 East; and the Eastern One-half of Section 14, Township 3 South, Range 8 East, of the Gila and Salt Rivers Base and Meridian in Pinal County, Arizona.

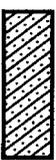
# COCHISE COUNTY Pinal

## RANGE 8 East



## TOWNSHIP 3 South

DECISION NO. \_\_\_\_\_

-  W-2859 (3)  
Diversified Water Utilities, Inc.
-  W-2234 (2)  
H<sub>2</sub>O, Inc.
-  WS-2987 (6)  
Johnson Utilities Company
-  W-2425 (2)  
Sun Valley Farms Unit VI Water Company
-  Diversified Water Utilities, Inc.  
Docket No. W-02859A-04-0844  
Second Amended Application for Extension
-  Sewer