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BEFORE THE ARIZONA CORPORATION COMMISSION 2007 DEC 13 12:38

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission DOCKETED AZ CORP COMMISSION DOCUMENT CONTROL

DEC 13 2002

DOCKETED BY [Signature]

IN THE MATTER OF THE )  
APPLICATIONS OF H2O, INC. AND )  
JOHNSON UTILITIES COMPANY FOR )  
AN EXTENSION OF THEIR )  
CERTIFICATES OF CONVENIENCE AND )  
NECESSITY. )  
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. )  
IN THE MATTER OF THE APPLICATION )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. TO EXTEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY. )  
IN THE MATTER OF THE APPLICATION )  
OF QUEEN CREEK WATER COMPANY )  
TO EXTEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY. )

DOCKET NOS. W-02234A-00-0371  
WS-02987A-99-0583

DOCKET NO. WS-02987A-00-0618

DOCKET NO. W-02859A-00-0774

DOCKET NO. ~~W-01255A-00-0784~~

**DIVERSIFIED WATER UTILITIES, INC.'S NOTICE OF FILING  
EXCEPTIONS TO STAFF'S RECOMMENDED ORDER REGARDING  
JOHNSON UTILITIES COMPANY'S REQUEST FOR EXTENSION OF TIME  
TO COMPLY**

Diversified Water Utilities, Inc. ("Diversified") hereby files its Exceptions  
to Staff's Recommended Order Regarding Johnson Utilities Company's Request for  
Extension of Time to Comply.

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Respectfully submitted this 13th day of December, 2002.

MARTINEZ & CURTIS, P.C.



Paula A. Williams, Esq.  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090

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**PROOF OF SERVICE AND  
CERTIFICATE OF MAILING**

I hereby certify that on this 13th day of December, 2002, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and twenty-one (21) copies of said document to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

With copies of the foregoing mailed and/or hand-delivered this 13th day of December, 2002 to:

Marc Stern, Administrative Law Judge  
Arizona Corporation Commission  
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Ernest Johnson, Director  
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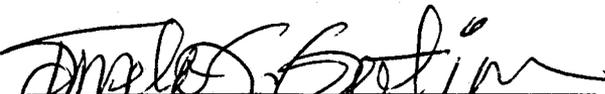
Richard N. Morrison  
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Kathy Aleman, Manager  
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3850 East Baseline Road, Suite 123  
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Intervenor

Petra Schadeberg  
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3408 North 60<sup>th</sup> Street  
Phoenix, Arizona 85018-6702  
Intervenor

Dick Maes, Project Manager  
Vistoso Partners, LLC  
1121 West Warner Road Suite 109  
Tempe, Arizona 85284  
Intervenor

  
1620-3-1 pleadings/exceptions to JUL extension.1212.02

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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 )  
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  
EXCEPTIONS TO JOHNSON UTILITIES COMPANY'S REQUEST  
FOR EXTENSION OF TIME TO COMPLY**

Diversified Water Utilities, Inc. ("Diversified"), hereby files its Exceptions to Johnson Utilities Company's ("JUL") request for extension of time to comply with Decision No. 63960 (September 4, 2001) as amended by Decision No. 64062 (October 4, 2001) in order to file required Arizona Department of Environmental Quality ("ADEQ")

1 compliance documents. JUL's request for an equitable extension is offensive to the  
2 principles of equity and fairness in that JUL has made little effort to comply with the  
3 amended Decision (having previously belatedly requested and received extensions to  
4 comply with the amended Decision in January of 2002 – See Procedural Order dated  
5 February 22, 2002) and, despite a general obligation to serve the public interest as a  
6 public service corporation, JUL IS unfairly interfering in the water operations of  
7 Diversified.

8  
9 **I. EQUITABLE PRINCIPLES MILITATE AGAINST THE  
10 GRANTING OF AN EXTENSION TO JUL.**

11 JUL's request for extension is ostensibly a request to be treated equitably in  
12 the face of circumstances, which, JUL claims, prevent compliance with the amended  
13 Decision. However, JUL's prior behavior in its dealings with the Commission and  
14 ADEQ, as well as with Diversified, supports that it is equitable to deny JUL's request and  
15 to enforce the Commission's Decision.

16 **A. Because JUL has not taken necessary steps to comply with the  
17 amended Decision, granting an extension to JUL is not  
18 reasonable.**

19 On September 4, 2001, the Commission issued Decision No. 63960  
20 (subsequently amended by Decision No. 64062 on October 4, 2001 – “amended  
21 Decision”), in which the Commission approved the extension of the Certificates of  
22 Convenience and Necessity (“Certificates”) of JUL and the other above-captioned  
23 utilities subject to a number of conditions. One condition required JUL to file, within 30  
24 days of the anniversary date of the amended Decision, each year for two (2) years,  
25 documentation from ADEQ indicating that JUL has been in compliance with ADEQ for  
26

1 each year. The amended Decision indicated that failure to submit this documentation in  
2 the docket or failure to correct any major or minor violation within 90 days from the date  
3 of notice of violation would result in the Certificate authorized therein becoming null and  
4 void without further order of the Commission. The ADEQ documentation was to be filed  
5 by November 4, 2002. JUL failed to timely file its documentation.

6 Finally, on November 8, 2002, JUL filed a request for retroactive extension  
7 of time to comply with the amended Decision in order to file the required ADEQ  
8 compliance documentation. As indicated in Administrative Law Judge Marc Stern's  
9 ("ALJ Stern") recommendation regarding JUL's request for extension, JUL has yet to file  
10 for a copy of its documentation from ADEQ. See, Recommendation, p. 3, ¶13.

11 JUL's lack of effort to comply with the Commission's Decision is  
12 exemplary of JUL's irresponsible behavior toward the Commission and its irresponsible  
13 business dealings in general. In fact, this is not the first time that JUL has belatedly  
14 requested an extension to comply. On January 28, 2002, JUL filed an Emergency  
15 Request for Extension of Time to Comply and Issuance of Procedural Order Nunc Pro  
16 Tunc in response to a Notice of Violation ("NOV"), citing four items in violation of  
17 ADEQ regulations. (Letter to George Johnson from ADEQ, dated October 16, 2001,  
18 contained as an attachment to Emergency Request for Extension of Time to Comply and  
19 Issuance of a procedural Order Nun Pro Tunc, attached as Exhibit A). Despite being  
20 informed of the violations two (2) weeks prior to the date on which JUL's compliance  
21 documents were due, JUL did not request an extension of time until more than three (3)  
22 months had passed. Such belated and irresponsible behavior toward the Commission and  
23 its decisions should not now be awarded with another extension.  
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**B. JUL has a history of ADEQ violations.**

During the year 2000, there were twelve (12) registered complaints against JUL, and in 2001, JUL was informed of four (4) compliance violations, including failure of the water hauler to maintain a log of all on-loading, chlorine disinfect additions and residual-free chlorine measurements. (Letter to George Johnson from ADEQ, dated October 16, 2001, contained as an attachment to Exhibit A)

**II. JUL IS UNFAIRLY INTERFERING IN THE BUSINESS OPERATIONS OF DIVERSIFIED.**

Recently, JUL insinuated itself into the condemnation action instituted by Diversified against Russell Brandt, *et al.* for the condemnation of a wellsite, which is completely encompassed by Diversified's certificated area. As previously noted, JUL entered into a "management contract" to oversee the operations of the District. JUL has become involved in the condemnation action because it has allegedly purchased the wellsite to be utilized in the District. In doing so, JUL has acted contrary to a directive from the Commission. On December 6, 2000, ALJ Stern, in open hearing, directed JUL "to mind their own business," and to discontinue its harassing behavior against Diversified. (Transcript of Arizona Corporation Commission hearing in Docket Nos. W-02234A-00-0775 and WS-02987A-00-0775, p. 62, ln. 14, attached as Exhibit B). ALJ Stern had earlier enjoined JUL from attempting to obtain interest in the wellsite, which is the subject of the afore-mentioned condemnation action, and from interfering in Diversified's business operations (i.e. attempting to subvert Diversified's application for a WIFA loan). (Exhibit B, p. 65, lns. 4-13) Now, JUL has informed Diversified in the condemnation action that it has acquired an interest in the wellsite. (Johnson Utilities, L.L.C.'s Responses to Non-Uniform Interrogatories, p. 3, attached as Exhibit C).

1 JUL has chosen to ignore the directives of the Commission it obtaining an  
2 interest in the wellsite it was previously enjoined from obtaining and in failing to file its  
3 ADEQ compliance documentation. If JUL is permitted to flout the orders, decisions and  
4 directives of the Commission, it will continue to do so in the future.

5 **A. Currently, Diversified is involved in two (2) litigation matters,**  
6 **which have a bearing on the issues at hand.**

7 Diversified has filed a lawsuit challenging the formation of the Skyline  
8 Domestic Water Improvement District (“the District”) on the basis that the Pinal County  
9 Board of Supervisors abused its discretion in forming the District in that its actions were  
10 arbitrary, capricious and/or contrary to law. (See CV2002-003724, Maricopa County  
11 Superior Court) The majority of the discontinuous District was formed over Diversified’s  
12 certificated area. George Johnson, JUL’s owner, was integral promoting the formation of  
13 the District. JUL and Pinal County have entered into a “management agreement,” which  
14 provides that JUL will oversee the operations of the District for the next 30 years, in  
15 effect extending JUL’s service area responsibility into and overlapping that of  
16 Diversified. (Water Service, Supply and Management Agreement, attached as Exhibit D)

17 In addition, Diversified filed a condemnation action to obtain a wellsite,  
18 located within Diversified’s certificated area and outside of the area encompassed by  
19 District’s boundaries. (CV2002-00245, Pinal County Superior Court – “condemnation  
20 action”)<sup>1</sup> This wellsite is extremely important to the continued operations of Diversified  
21 and its continued service to its clients. The Defendants in the condemnation action  
22 recently alleged that they have sold the wellsite to JUL for use within the District.  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> While Martinez & Curtis, P.C. represents Diversified in the action challenging the District’s formation; it does not represent Diversified in the condemnation action. Due to the short time in which to file Exceptions we are in good

1 (Defendants' Opening Brief in the condemnation action, p. 3, ln. 10-11, attached as  
2 Exhibit E).

3 B. JUL's actions in the condemnation action show that it is not  
4 treating Diversified in an equitable fashion and is, therefore, not  
5 entitled to equity itself.

6 JUL's involvement in the condemnation action is intended to improperly  
7 delay the condemnation action and to harass Diversified. (See Exhibits C and E,  
8 pleadings from the condemnation action) In the condemnation action, JUL is attempting  
9 to thwart Diversified's acquisition of a, even though the wellsite is fully contained within  
10 Diversified's certificated area and outside both JUL's certificated area and the District's  
11 boundaries. JUL is aware that Diversified has a need for this second well and that it will  
12 aid Diversified in its continued service to its customers. Furthermore, JUL, as the  
13 District's contracted manager, should be aware that some 25 other wells exist within the  
14 District's service and that one of these wells or a combination of these wells would fully  
15 and adequately serve the District's future customers. (See List of wellsites contained  
16 within the District, attached as Exhibit F) In fact, there are three wells contained within  
17 the District, which are in close proximity to the wellsite and could serve the need of the  
18 District. (Map of western portion of Diversified's certificated area and the western  
19 portion of the District's boundaries, attached as Exhibit G) Yet, JUL has chosen to  
20 combat Diversified's effort to obtain a well that is located within Diversified's service  
21 area.  
22

23 JUL has expended much time and effort in combating Diversified in the  
24 condemnation action and is even funding the legal costs of the condemnation action for  
25

26 faith relying on the assertions reflected in the Pleadings filed in the condemnation action.

1 all Defendants. (Exhibit C) As a result, Diversified has been forced to expend  
2 significant time, effort and resources in the pending condemnation action, needlessly  
3 depleting its limited resources. (For a fuller discussion of JUL's activities in relation to  
4 the condemnation action, see Plaintiff's Response to Defendants' Opening Brief re: the  
5 Law of the Case, pp. 10-13, attached as Exhibit H) As reflected in Exhibit F, JUL's  
6 actions are an obvious attempt to undermine Diversified's position in the condemnation  
7 action and in Diversified's service of its customers.

8  
9 **III. CONCLUSION**

10 The history of JUL's operations in Pinal County and the history of combat  
11 with Diversified demonstrates JUL is more willing to expend its resources and energy  
12 fighting Diversified than complying with orders of the Commission. JUL is asking for  
13 another extension of time, as noted in the Recommendation, before even attempting to  
14 comply with the amended Decision. JUL is blatantly disregarding the seriousness of the  
15 orders made by the Commission. If JUL does not behave in an equitable manner, it  
16 should not be the recipient of the benefits of equity. Therefore, for all of the reasons  
17 contained herein, Diversified requests that JUL's request for extension to comply be  
18 denied.

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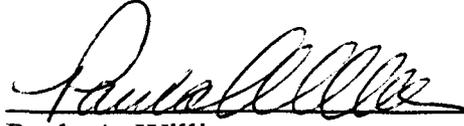
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Respectfully submitted this 13th day of December, 2002.

MARTINEZ & CURTIS, P.C.



Paula A. Williams  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090

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Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
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Dick Maes, Project Manager  
Vistoso Partners, LLC  
1121 West Warner Road Suite 109  
Tempe, Arizona 85284  
Intervenor

  
1620-3-1 pleadings exceptions to JEL extension.1212.02

**EXHIBIT A**

1 Richard L. Sallquist (002677)  
Sallquist & Drummond, P.C.  
2 2525 East Arizona Biltmore Circle  
Suite 117  
3 Phoenix, Arizona 85016-2129  
(602) 224-9222  
4 Attorneys for Johnson Utilities Company

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**ARIZONA CORPORATION COMMISSION**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

6 IN THE MATTER OF THE APPLICATION ) DOCKET NO. WS-02987A-99-0583  
OF JOHNSON UTILITIES, L.L.C. DBA )  
7 JOHNSLN UTILITIES COMPANY FOR AN )  
EXTENSION OF ITS CERTIFICATE OF )  
8 CONVENIENCE AND NECESSITY TO )  
PROVIDE WATER AND WASTEWATER )  
9 SERVICE TO THE PUBLIC IN THE )  
DESCRIBED AREA IN PINAL COUNTY, )  
10 ARIZONA. )

11 IN THE MATTER OF THE APPLICATON OF ) DOCKET NO. WS-02987A-00-0618  
JOHNSON UTILITIES, L.L.C. DBA )  
12 JOHNSON UTILITIES COMPANY FOR AN ) EMERGENCY REQUEST FOR  
EXTENSION OF ITS CERTIFICATE OF ) EXTENSION OF TIME TO  
13 CONVENIENCE AND NECESSITY TO ) COMPLY AND ISSUANCE OF A  
PROVIDE WATER AND WASTEWATER ) PROCEDURAL ORDER NUN  
14 SERVICE TO THE PUBLIC IN THE ) PRO TUNC  
DESCRIBED AREA IN PINAL COUNTY, )  
15 ARIZONA. )

16 1. Johnson Utilities Company L.L.C. dba Johnson Utilities Company (" JUC" or the  
17 "Company") hereby requests the Administrative Law Judge issue a Procedural Order Nun Pro  
18 Tunc, extending the time to comply with certain requirements of the Certificate of Convenience  
19 and Necessity issued Decision No. 63960, dated September 4, 2001, as amended in Decision No.  
20 64062, dated October 4, 2001, (the "Decision") and declaring that the Decision is, and at all  
21 times since October 4, 2001, has been in full force and effect.

22 2. The Decision states in part at page 34, "IT IS FURTHER ORDERED that in the  
23 event the Johnson Utilities, dba Johnson Utilities... fail(s) to cure any major or minor violations

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**FEB 26 2002**  
MARTINEZ & CURTIS

1 cited by ADEQ within 90 days from the date of notice or request an extension there from, then  
2 such conditional Certificate granted herein... shall be rendered null and void without further order  
3 of the Commission."

4 3. On October 16, 2001 the Arizona Department of Environmental ("ADEQ) issued  
5 a Notice of Violation ("NOV") citing four items alleged to be violations of ADEQ regulations.  
6 (See attached)

7 4. Arizona Corporation Commission Compliance Manager, Patrick Williams, sent a  
8 letter to the Company dated October 24, 2001 requesting notification of compliance with that  
9 NOV. That letter was not received by the Company nor any of its consultants or lawyers.

10 5. On January 18, 2002 Mr Williams sent another letter to Mr. Johnson indicating  
11 the Certificate granted in the Decision was "null and void". (See attached)

12 6. On January 23, 2002 counsel for the Company responded to the January 18, 2002  
13 letter indicating that the October 24, 2001 letter had not been received, and that all alleged  
14 violations have been "cured" well in advance of the deadline and requesting written confirmation  
15 that the Certificate remained in full force and effect. (See attached)

16 7. The Commission's Utilities and Legal Divisions advised the Company on January  
17 25, 2002 that in their opinion the Commission Staff did not have authority to assure the requested  
18 letter, and that the appropriate remedy was for the Company to file the subject Motion.

19 8. The NOV lists four alleged violations which in summary were as follows:

20 A. Failure to obtain Approval to Construction for replacement of the Sun Valley  
21 Farms Unit V collapsed well.

22 B. Failure to obtain Approval to Construct the Ricke Well and related pipeline.

23 C. Failure to obtain Approval of Construction for facilities referenced in Item B.

1  
2 D. Failure to maintain residential chlorine logs for 6 months of water hauling to Sun Valley Farm Unit V.

3 9. Those violations were "cured" by Company and/or ADEQ actions as follows and  
4 are attached to undersigned counsel's letter to Mr. Williams, dated January 23, 2002:

5 A. Approval of Construction for Reverse Osmosis Unit and new well at Sun Valley Farms Unit V, issued on April 10, 2001.

6 B. Approval to Construct the Ricke Well and related piping, issued October 18,  
7 2001.

8 C. The Ricke Well facilities have not been completed. An Approval of  
9 Construction will be requested when construction is completed. In the meantime, there is  
10 no violation since the well is not being operated.

11 D. Letter from Mike Denby to William DePaul, dated April 23, 2001.

12 10. The Company's "cures" to all of the alleged violations were provided to ADEQ  
13 prior to or within TWO days of the October 16, 2001 NOV. It is submitted that there is nothing  
14 more that the Company can do to remedy those violations, nor is there any addition approval  
15 ADEQ can issue in that regard. The Company and ADEQ are negotiating the final resolution of  
16 this NOV.

17 11. The Commission Staff concurs that the "cure" contemplated by the Decision did  
18 not require the issuance of any Consent Order ADEQ may require.

19 12. The Company did not notify the Commission that it had provided ADEQ with the  
20 "cure", although it should be noted that the Decision did not required that notice. Had Mr.  
21 Williams' letter of October 24, 2001 been received, notice of compliance would have been  
22 provided at that time.

23 13. Attached hereto is the Affidavit of Mike Denby of Lewis & Roca, the Company's  
ADEQ attorney, indicating that he had a discussion on January 28, 2002, with William DePaul.

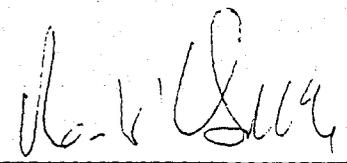
1 the ADEQ employee who issued the NOV, confirming that the Company has, in fact, "cured" all  
2 violations.

3 14. The developers within the subject certificated area, including Bezer Homes, El  
4 Dorado Holdings, and the Pecan Ranch, are in various stages of negotiating certain sales and/or  
5 financings regarding the development of those properties. Bezar Homes has a requirement from  
6 its financier that it have a commitment as to water and wastewater service before February 1,  
7 2002 which obviously can not be made based on Mr. Williams January 18, 2002 letter. Those  
8 developers must immediately be assured that the Certificate of Convenience and Necessity is in  
9 full force and effect.

10 WHEREFORE, the Company hereby requests, that to the extent necessary, the  
11 Administrative Law Judge grant an extension of time for the Company to comply with the  
12 Decision, and further requests that the Judge issue an Order Nun Pro Tunc declaring that the  
13 Certificate of Convenience and Necessity granted to JUC in Decision 64062 dated October 4,  
14 2002 is, and has been at all time since October 4, 2002, been in full force and effect.

15 Respectfully submitted this 25<sup>th</sup> day as January, 2002.

16 SALLQUIST & DRUMMOND, P.C.

17  
18  
19 By   
Richard L. Sallquist  
20 2525 East Arizona Biltmore Circle, Suite 117  
21 Phoenix, Arizona 85016  
22 Attorney for Johnson Utilities, L.L.C.  
23

1 Original and ten copies of the  
foregoing filed this 20<sup>th</sup> day  
2 of January, 2002, with:

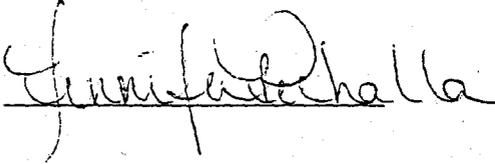
3 Docket Control  
Arizona Corporation Commission  
4 1200 West Washington  
Phoenix, Arizona 85007

5 A copy of the foregoing was  
6 mailed this 20<sup>th</sup> day of  
January, 2002, to:

7 Marc Stern  
8 Administrative Law Judge  
Arizona Corporation Commission  
9 1200 West Washington  
Phoenix, Arizona 85007

10 Janice Alward  
11 Legal Division  
Arizona Corporation Commission  
12 1200 West Washington  
Phoenix, Arizona 85007

13 Patrick Williams  
14 Utilities Division  
Arizona Corporation Commission  
15 1200 West Washington  
Phoenix, Arizona 85007

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17   
18

19  
20  
21  
22  
23



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

DW-02-098  
October 16, 2001

CERTIFIED MAIL  
Return Receipt Requested  
7099-3400-0016-2571-6260

Mr. George Johnson, President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

Subject: Sun Valley Farms Unit V, Public Water System (PWS) PWS ID #11-116

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ), Water Quality Division, Water Quality Compliance Section, Drinking Water Compliance and Enforcement Unit has reason to believe that Mr. George Johnson, President, Johnson Utilities Co. as the owner and operator of PWS ID # 11-116, Sun Valley farms Unit V (Water Supplier), located near the City of Queen Creek in Pinal County, Arizona, has violated the Arizona Revised Statutes (A.R.S.) § 49-101 *et seq.* or the applicable rules found in the Arizona Administrative Code (A.A.C.). ADEQ discovered the violations alleged below during review of the facility's file completed on October 5, 2001.

### I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

<u>Legal Authority</u>	<u>Nature of Violation</u>
A. A.A.C. R18-4-507.	Failure of the Water Supplier to receive an Approval of Construction (AOC) from ADEQ, prior to operating a newly constructed facility.

No documentation exists in the public record at ADEQ that proves the required AOC (project # 20000368) was received by the water supplier prior to March 2, 2001. Johnson Utilities placed a newly constructed facility into service on October 3, 2000, and continued serving water to the Sun Valley Farms Unit V drinking water distribution system until March 27, 2001, a total of 178 days of operation.

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

## Notice of Violation

PWS ID# 11-116, Sun Valley Farms Unit V water system

October 16, 2001

- B. A.A.C. R18-4-505. Failure of the water supplier to receive an Approval to Construct (ATC) from ADEQ, prior to starting construction of a modification to an existing facility.

No documentation exists in the public record that proves the required ATC was received by the water supplier prior to the construction of the "Rickie well", (ADWR # 55-570372) the associated line extension and connection to the Sun Valley Farms Unit V distribution system PWS ID # 11-116. Johnson Utilities began construction of the "Rickie well", the associated pipe line (Copper Road water transmission main) and the connection to PWS ID # 11-116, on December 2, 1998 and completed the construction on March 31, 1999, a total of 120 days.

- C. A.A.C. R18-4-507 Failure of the Water Supplier to receive an Approval of Construction (AOC) from ADEQ, prior to operating a newly constructed facility.

No documentation exists in the public record at ADEQ that proves the required AOC (Rickie Well/Cooper Road water transmission main project) was received by the water supplier from ADEQ, prior to March 12, 2001. Johnson Utilities placed a newly constructed facility into service on March 12, 2001, and continued serving water to the Sun Valley Farms Unit V distribution system until March 27, 2001, a total of 15 days of operation.

- D. A.A.C. R18-4-125.F Failure of the water hauler to maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements.

Johnson Utilities reported that water was hauled from September 1, 2000, until October 3, 2000. The log provided to ADEQ by Johnson Utilities indicates water hauling was discontinued on September 28, 2000. Therefore, the required log was not maintained for 6 days when water was being hauled to the Sun Valley Farms Unit V water system.

Notice of Violation

PWS ID# 11-116, Sun Valley Farms Unit V water system

October 16, 2001

## II. DOCUMENTING COMPLIANCE

- A. ~~Within 7 days of the effective date of this notice,~~ Johnson Utilities Co., as owner and operator of PWS # 11-116, Sun Valley Farms Unit V water system, shall provide information as follows:

A report relating to the current status of the Ricki Well and the associated pipe line which will connect the Ricki well to the Sun Valley Farms Unit V distribution system. The status report should include a written description of the current status in obtaining, from ADEQ, the required Approval to Construct (ATC) and the Approval of Construction (AOC).

## III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Bill DePaul, Case Manager  
Arizona Department of Environmental Quality  
Drinking Water Compliance & Enforcement Unit  
3033 North Central Avenue M0501B  
Phoenix, Arizona 85012-2809

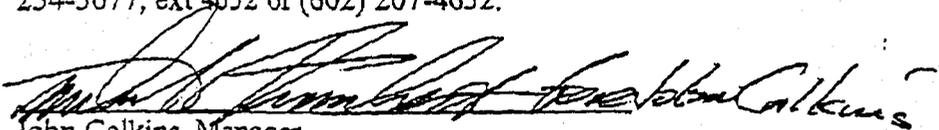
## IV. STATEMENT OF CONSEQUENCES

- A. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame and/or substantial civil penalties. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
- B. Achieving compliance does not preclude ADEQ from seeking civil penalties for the violations alleged in this Notice as allowed by law.

Arizona Department of Environmental Quality  
Drinking Water Compliance & Enforcement Unit  
3033 North Central Avenue  
Phoenix, Arizona 85012-2809

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Bill DePaul at 1-800-234-5677, ext 4652 or (602) 207-4652.

  
John Calkins, Manager  
Drinking Water Compliance & Enforcement Unit

  
Bill DePaul, Enforcement Coordinator  
Drinking Water Compliance & Enforcement Unit

JAC:WAD:mf3

cc: DWCEU Reading File  
Facility File PWS 11-116  
Bill DePaul, Case Manager

Certified Mail Return Receipt

7099-3400-0016-2571-6277

Delator Corporation, Statutory Agent  
Johnson Utilities, L.L.C.  
7201 E. Camelback Road, # 330  
Scottsdale, AZ 85251

Regular U.S. Mail

Karen Berry, Field Inspector  
Arizona Department of Environmental Quality  
Water Quality Compliance Section  
Drinking Water Compliance Enforcement Unit  
3033 N. Central, M0501B  
Phoenix, AZ 85012-2809

Reg Glos, Director of Environmental Health  
Pinal County Health Department  
P.O. Box 2517  
Florence, AZ 85232

Steve Olea, Assistant Director  
Arizona Corporation Commission  
Utilities Division  
1200 West Washington  
Phoenix, Arizona 85007

Steve Olea, Asst  
Arizona Corporation  
Commission  
Utilities Division  
1200 West Washington  
Phoenix, Arizona

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



BRIAN C. McNEIL  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

January 18, 2002

Mr. George Johnson  
Johnson Utilities Company  
5320 East Shea Blvd  
Scottsdale, Arizona 85254

Dear Mr. Johnson:

On October 24, 2001, I sent you a letter indicating that I was in receipt of an Arizona Department of Environmental Quality (ADEQ) "Notice of Violation" (NOV) dated October 16, 2001. In that letter, I advised you that Arizona Corporation Commission (Commission) Decision No. 63960, dated September 4, 2001 (amended in Decision No. 64062, dated October 4, 2001) granted Johnson Utilities Company's (Johnson) a Certificate extension conditioned on it correcting any major or minor violations contained within an ADEQ NOV within 90 days from the date of the NOV to cure the defect or request an extension from the Commission in order to remedy the violation. I also indicated that Johnson's failure to do so will result in the Certificate authorized in Decision No. 63960 (64062) becoming null and void without further order of the Commission.

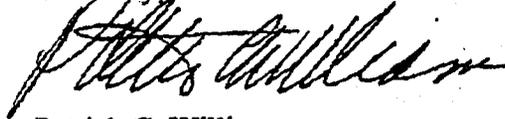
Further, I requested that you provide me with documentation showing that Johnson has corrected the deficiencies noted in the October 16, 2001, NOV by January 14, 2002. I have not received any response from you nor has the Commission received any documentation indicating the NOV or the major or minor deficiencies noted therein have been corrected. I have contacted Mr. Bill DePaul at ADEQ. He has indicated to me that Johnson has not corrected the deficiencies stated in the NOV, nor has Johnson entered into a consent order. Therefore, pursuant to Commission Decision No. 63960 (64062) the Certificate granted to Johnson is null and void as of January 16, 2002. Consequently, Johnson is not authorized to provide service, or

Mr. Johnson  
January 18, 2002  
Page 2

to collect any monies from developers in anticipation of service, to any areas conditionally granted to it in Decision No. 63960 (64062). The areas conditionally granted to Johnson will be removed from the maps at the Commission.

If you have any questions, I may be contacted at 602-542-0818.

Sincerely,



Patrick C. Williams  
Manager, Compliance and Enforcement  
Utilities Division

pcw  
cc: Docket Control

RICHARD L. SALLQUIST

PHONE (602) 224-9222  
FACSIMILE (602) 224-9366  
E-MAIL dick@sd-law.com

January 23, 2002

**HAND-DELIVERED**

Patrick Williams  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

RECEIVED  
JAN 23 P 3:11  
CORPORATION

Re: Johnson Utilities Company Compliance with Decision No. 63960, dated September 4, 2001, as Amended by Decision No. 64062, dated October 4, 2001.

Dear Mr. Williams:

Regarding your January 18, 2002 letter to George Johnson, the Company believes it has "cure(d) any major or minor violation cited by ADEQ within 90 days from the date of notice..." as required in Decision No. 64062 (the "Decision"), and is in compliance with all matters as of the date of your letter. We do acknowledge that there are other compliance items due under the Decision at future dates.

Your letter indicated that you had requested a notice of compliance by January 14, 2002 regarding the October 16, 2001 Notice of Violation ("NOV") issued by the Arizona Department of Environmental Quality ("ADEQ"). Although the compliance items and dates were clearly set forth in the Decision, neither the Company, nor any of its consultants or lawyers received your letter. Your letter was not disregarded; it was just not received. The Company's substantive response would have been as indicated in this letter. The Company is of the opinion that they complied with the Decision in a timely fashion, before January 14, 2002. If the Company failed at all, it was not in notifying you of its compliance with ADEQ, although the Decision did not require such a notification to Staff.

The October 16, 2001, NOV, a copy of which is attached for your ready reference, itemizes four violations and we shall address those issues serially. It must be noted that in none of the "violations" was there a question of on going public health or safety. The Company recognizes the importance of the regulatory compliance with the mandated paperwork, but as discussed below, ADEQ only issued this NOV in an effort to document the alleged violations and to support the penalties ADEQ wishes to impose upon the Company through a consent order. Please note there has not been a "Cease and Desist Order" issued by ADEQ regarding these or any alleged health or safety violation, since the violations are not on going.

well at Sun Valley Farms, Unit Five. The Company Construction ("AOC") on April 10, 2001 (See attached). Incidentally, this new well is part of the Company's continuing effort to bring that system into compliance. You may recall that at the hearing on the Company's Certificate Application it was established that the prior owner's of that system had been in violation of ADEQ Regulation for over 15 years, with criminal violations in over half of those years. After acquiring the troubled system, the Company has spent over \$300,000 on that system in an attempt to bring it within compliance. This violation was noted by ADEQ after a meeting, which Johnson Utilities initiated, to advise ADEQ that its consulting engineer had failed to properly document the new well, and had commenced pumping that well prior to receiving the required approvals. At that time the Company ceased pumping the well, and did not resume pumping until after receipt of approval from ADEQ.

Regarding Item 1 B and C of the October 16, 2001 NOV, both relate to the new "Ricke Well". Those Items allege failure to obtain the ATC and AOC for that new well. Again, a communications problem with the Company's former engineering consultant resulted in the failure to obtain the ATC prior to construction and the operation of the well, which was operated for a period of two days without an AOC. The ATC was obtained on October 19, 2001, and "cured" that violation. (Please see attached copy). The AOC Application has not been filed with ADEQ because construction has not been completed. Since the well is not being operated, there is no current on going violation.

As to Item 1 D. during the one month in 2000 that the only operating well able to serve Sun Valley Farms was out of service, the Company did haul water from other wells to serve those customers. On August 23, 2001, the required "logs" were filed with ADEQ for 28 days, but inexplicably the data for the last six days was not available. (Please see attached). As with the other "violations", there were no water quality issues, only a filing omission. Again, the Company does not dismiss the importance of the compliance filing issues, but the NOV was merely the vehicle necessary to set up ADEQ's legal entry into the Consent Order.

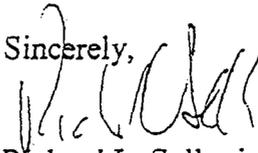
Your letter states that no Consent Order has been entered into by Johnson Utilities. Although this is correct, it is not due to delays by Johnson Utilities. The Company's stipulated form of that Consent Order has been "in process" at ADEQ for several months. However, we do not believe that the Consent itself is a "cure [of] any major or minor violation cited by ADEQ" as ordered by the Decision. The "cure" of all items has been provided to ADEQ in a timely fashion, and no major or minor violations exist today. ADEQ has agreed with the Company that no on-going violations exist under this NOV.

Based upon the above, we believe your letter is incorrect in concluding that the Company has not complied with Decision No. 64062, and further believe that the Certificate of Convenience and Necessity is in full force and effect. We would appreciate your written confirmation to that effect. In the event this explanation does not resolve

your concerns and you do not concur with our position, please let me know if possible.

The Company is very concerned with its regulatory reputation, and although there have been typical issues with regulatory agencies during the Company's startup period, the Company has worked diligently to correct all outstanding issues and legal requirements in a timely fashion. As indicated above, certain of the Company's problems came about due to consultants (who are no longer working with the Company) failing to file the appropriate documents, improperly advising the Company, and in some instances, outright lying to the Company and the regulators about certain matters. The Company believes it now has reorganized its team of consultants so that these incidents will not occur in the future. To that end, I will contact you and other Staff members in the near future to request a meeting so that the Company can "clear the air" by explaining its actions as well as seeking your input as to how the Company's actions and communications can be improved for this long-term relationship. In the event you have any questions regarding any of these matters, please do not hesitate to call.

Sincerely,



Richard L. Sallquist  
For the Firm

cc: Docket Control  
George Johnson  
Paul Gardner  
Mike Denby  
Brian Tompsett



Jane Dee Hull  
Governor

# DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

DW-02-098  
October 16, 2001

CERTIFIED MAIL  
Return Receipt Requested  
7099-3400-0016-2571-6260

Mr. George Johnson, President  
Johnson Utilities, LLC  
5230 East Shea Boulevard  
Scottsdale, Arizona 85254

Subject: Sun Valley Farms Unit V, Public Water System (PWS) PWS ID #11-116

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ), Water Quality Division, Water Quality Compliance Section, Drinking Water Compliance and Enforcement Unit has reason to believe that Mr. George Johnson, President, Johnson Utilities Co. as the owner and operator of PWS ID # 11-116, Sun Valley farms Unit V (Water Supplier), located near the City of Queen Creek in Pinal County, Arizona, has violated the Arizona Revised Statutes (A.R.S.) § 49-101 *et seq.* or the applicable rules found in the Arizona Administrative Code (A.A.C.). ADEQ discovered the violations alleged below during review of the facility's file completed on October 5, 2001.

### I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

	<u>Legal Authority</u>	<u>Nature of Violation</u>
A.	A.A.C. R18-4-507.	Failure of the Water Supplier to receive an Approval of Construction (AOC) from ADEQ, prior to operating a newly constructed facility.

No documentation exists in the public record at ADEQ that proves the required AOC (project # 20000368) was received by the water supplier prior to March 2, 2001. Johnson Utilities placed a newly constructed facility into service on October 3, 2000, and continued serving water to the Sun Valley Farms Unit V drinking water distribution system until March 27, 2001, a total of 178 days of operation.

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

## Notice of Violation

PWS ID# 11-116, Sun Valley Farms Unit V water system

October 16, 2001

- B. A.A.C. R18-4-505. Failure of the water supplier to receive an Approval to Construct (ATC) from ADEQ, prior to starting construction of a modification to an existing facility.

No documentation exists in the public record that proves the required ATC was received by the water supplier prior to the construction of the "Rickie well", (ADWR # 55-570372) the associated line extension and connection to the Sun Valley Farms Unit V distribution system PWS ID # 11-116. Johnson Utilities began construction of the "Rickie well", the associated pipe line (Copper Road water transmission main) and the connection to PWS ID # 11-116, on December 2, 1998 and completed the construction on March 31, 1999, a total of 120 days.

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Johnson Utilities reported that water was hauled from September 1, 2000, until October 3, 2000. The log provided to ADEQ by Johnson Utilities indicates water hauling was discontinued on September 28, 2000. Therefore, the required log was not maintained for 6 days when water was being hauled to the Sun Valley Farms Unit V water system.

Notice of Violation

PWS ID# 11-116, Sun Valley Farms Unit V water system

October 16, 2001

## II. DOCUMENTING COMPLIANCE

- A. ~~Within 7 days of the effective date of this notice~~, Johnson Utilities Co., as owner and operator of PWS # 11-116, Sun Valley Farms Unit V water system, shall provide information as follows:

A report relating to the current status of the Ricki Well and the associated pipe line which will connect the Ricki well to the Sun Valley Farms Unit V distribution system. The status report should include a written description of the current status in obtaining, from ADEQ, the required Approval to Construct (ATC) and the Approval of Construction (AOC).

## III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Bill DePaul, Case Manager  
Arizona Department of Environmental Quality  
Drinking Water Compliance & Enforcement Unit  
3033 North Central Avenue M0501B  
Phoenix, Arizona 85012-2809

## IV. STATEMENT OF CONSEQUENCES

- A. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame and/or substantial civil penalties. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
- B. Achieving compliance does not preclude ADEQ from seeking civil penalties for the violations alleged in this Notice as allowed by law.

DW-02-098  
Notice of Violation  
PWS ID# 11-116, Sun Valley Farms Unit V water system  
October 16, 2001

Page 4

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Bill DePaul at 1-800-234-5677, ext 4652 or (602) 207-4652.



John Calkins, Manager  
Drinking Water Compliance & Enforcement Unit



Bill DePaul, Enforcement Coordinator  
Drinking Water Compliance & Enforcement Unit

JAC:WAD:mf3

cc: DWCEU Reading File  
Facility File PWS 11-116  
Bill DePaul, Case Manager

Certified Mail Return Receipt

7099-3400-0016-2571-6277

Delator Corporation, Statutory Agent  
Johnson Utilities, L.L.C.  
7201 E. Camelback Road, # 330  
Scottsdale, AZ 85251

Regular U.S. Mail

Karen Berry, Field Inspector  
Arizona Department of Environmental Quality  
Water Quality Compliance Section  
Drinking Water Compliance Enforcement Unit  
3033 N. Central, M0501B  
Phoenix, AZ 85012-2809

Reg Glos, Director of Environmental Health  
Pinal County Health Department  
P.O. Box 2517  
Florence, AZ 85232

Steve Olea, Assistant Director  
Arizona Corporation Commission  
Utilities Division  
1200 West Washington  
Phoenix, Arizona 85007



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

## APPROVAL OF CONSTRUCTION

Project Description: Construct Reverse Osmosis (RO) Unit water treatment system to remove nitrates and construct new well (DWR #55-180641) to replace collapsed well for Sun Valley Farms water system and

NOTE: Approval is contingent upon the operation of the R/O Unit according to the Blending Plan contained in the Approval of Construction issued on July 19, 2000 (ADEQ Project #20000368).

Location: Sun Valley Farms V

Project Owner: Johnson Utilities Co  
Address: 5230 East Shea Blvd  
Scottsdale, Arizona 85254

The Arizona Department of Environmental Quality (ADEQ) hereby issues an Approval of Construction for the above-described facility based on the following provisions of Arizona Administrative Code (A.A.C.) R18-4-507 et seq.

On May 25, 2000 and July 19, 2000, ADEQ issued a Certificate of Approval to Construct for the referenced project.

On March 5, 2001, S. Daniel Cogan, P.E., certified the following:

- a final construction inspection was conducted on March 3, 2001;
- the referenced project was constructed according to the as-built plans and specifications and ADEQ's Certificate of Approval to Construct;

A microbiological sample was collected on June 25, 2000, and analyzed on June 27, 2000, by Aquatic Consulting & Testing Inc., ADHS License No. AZ0003. The sample result was negative for total coliform.

This Approval of Construction authorizes the owner to begin operating the above-described facilities as represented in the approved plan on file with the ADEQ. Be advised that A.A.C. R18-4-124 requires the owner of a public water system to maintain and operate all water production, treatment and distribution facilities in accordance with ADEQ Safe Drinking Water Rules.

WHS:mak

PWS No.: 11-116

ADEQ Projects No.: 20000227 and 20000368  
LTF No.: 22672

  
William E. Schafer, P.E., Manager  
Technical Engineering Unit  
Drinking Water Section

7/10/01  
Date Approved

- c:
- DWCSU Facility File
  - TEU Construction File
  - CRO Approval of Construction File
  - Pinal County Health Department
  - Pinal County Planning & Zoning Department
  - AZ Corporation Commission
  - Engineer

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733



**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
CERTIFICATE OF APPROVAL TO CONSTRUCT  
DRINKING WATER WELL FACILITIES**

ADEQ File No: 20010431	
System Name: Rickz Well Dvimp	System Number: 11116
Project Owner: Johnson Utility Company	
Address: 5230 E. Shea Blvd., #200, Scottsdale, AZ 85254	
Project Location: Queen Creek	County: Pinal
Description: INSTALL A NEW WELL (REGISTRATION NO. 55-570372) AND RELATED PIPING AT THE RICKZ WELL SITE.	

*Approval to construct the above-described facilities as represented in the approved documents on file with the Arizona Department of Environmental Quality is hereby given subject to provisions 1 through 4 continued on page 2 through 2*

1. Notice shall be given to the Central Regional office located in Phoenix when construction of the project begins to allow for inspection during construction per A.R.S. §49-104.B.10.
2. The project owner shall retain a professional engineer as soon as possible to provide detailed construction inspections of this project. Upon completion of construction, the engineer shall fill out the Engineer's Certificate of Completion (attached), and forward it to the Regional Office. If all requirements have been completed the Regional Office will issue a Certificate of Approval of Construction.
3. Operation of a newly constructed facility shall not begin until a Certificate of Approval of Construction has been issued by the Department.

The State law, A.R.S. §49-104.B.10, requires that construction of the project must be in accordance with rules and regulations of the Arizona Department of Environmental Quality. This certificate will be void if construction has not started within one year of the approval date. Upon request a written time extension may be granted by the Department.

Reviewed by KNS

By: *A. Hossain* 10/19/01  
 Aolad Hossain, P.E., Manager      Date  
 Technical Engineering Unit  
 Water Quality Division

File No: 20010431  
 Regional Office: Central  
 Owner: Johnson Utility Company  
 County Health Department: Pinal  
 Engineer: Coen Engineering  
 Planning and Zoning/Az. Com. Commission  
 Engineering Review Database - SR011

**CERTIFICATE OF APPROVAL  
WELL  
ADEQ FILE NO. 20010431  
PAGE 2 OF 2: PROVISION**

4. The fence gates shall be of lockable type.

Michael L. Denby  
Direct Dial: (602) 262-5383  
Direct Fax: (602) 734-3755  
Internet: MDenby@lrllaw.com  
Admitted in Arizona

**FILE COPY**  
Doc. No. 40123-00001

April 23, 2001

VIA FACSIMILE

William DePaul  
Arizona Department of Environmental Quality  
3033 N. Central Avenue  
Phoenix, Arizona 85012-2809

Re: Chlorination Records for Water Hauled to the Sun Valley Farms  
System

Dear Mr. DePaul:

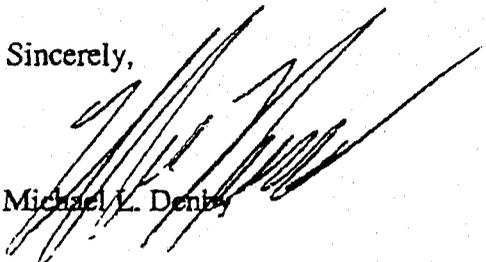
Pursuant to our discussion yesterday afternoon, I asked Johnson Utilities to locate the chlorination records for any water hauled to the Sun Valley Farms Unit V system. Johnson Utilities was able to locate chlorination records for the water shipments and those records are enclosed.

The chlorination records appear to end on September 27, 2000. Although the records appear to end prior to the October 3, 2000 date, there are several reasons why this information may be missing. First, it is my understanding that, although the samples were taken on time, the information was not always input into the log on a daily basis. It is presumed that the employee at the time had taken the samples for the missing six days, but had failed to enter them into the log. Second, if the water shipments ceased shortly after September 27, 2000, the employee may have seen no reason to enter the last few days of samples into the log. Finally, Johnson Utilities has recently moved offices and the person responsible for the water shipments is no longer with the company. Therefore, it is possible that records exist for the final six days, but that they have been misplaced. Johnson Utilities will continue to search for these records and will let ADEQ know as soon as they find something.

Due to the proximity of September 27, 2000 to the October 3, 2000 inspection date, Johnson Utilities remains confident that water was hauled to the Sun Valley system up until the time of the ADEQ inspection.

Please feel free to contact me if you need additional information.

Sincerely,



Michael L. Denby

MLD/mld  
Attachments



AFFIDAVIT OF MICHAEL L. DENBY

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

I, Michael L. Denby, state as follows:

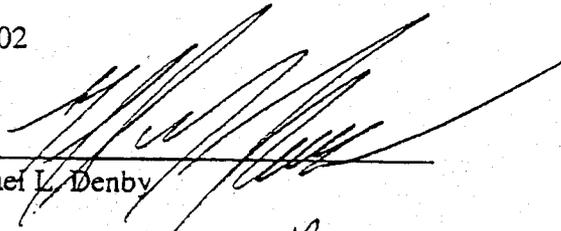
1. On January 23, 2002 and again on January 28, 2002, I had a telephone conversation with Mr. William DePaul, Environmental Enforcement Coordinator at the Arizona Department of Environmental Quality.

2. The purpose of the January 23, 2002 and January 28, 2002 telephone calls with Mr. DePaul was to clarify whether there were any ongoing compliance issues associated with the items listed in the October 16, 2001 NOV issued by the Arizona Department of Environmental Quality.

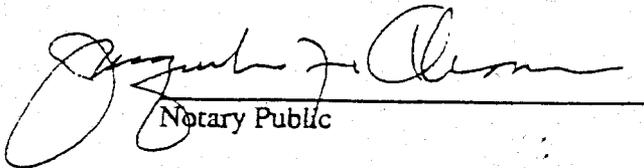
3. Mr. DePaul informed me that the Department was not requiring nor expecting that Johnson Utilities undertake any additional action in order to comply with the items listed in the NOV, because Johnson Utilities has obtained the required ATC, AOC, disconnected the Ricke well system from the Sun Valley distribution system, and submitted the materials requested in the NOV.

4. Mr. DePaul did state that the matter was not closed and that the Department would be continuing to pursue some form of order to finalize and close the NOV.

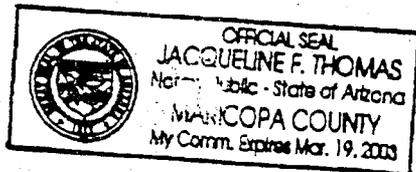
DATED this 28<sup>th</sup> day of January 2002

  
\_\_\_\_\_  
Michael L. Denby

SWORN AND SUBSCRIBED to before me this 28<sup>th</sup> day of January, 2002,

  
\_\_\_\_\_  
Notary Public

My Commission Expires



# **EXHIBIT B**

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. AGAINST JOHNSON UTILITIES )  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH )  
THE OPERATIONS OF AN EXISTING )  
LINE, PLANT OR SYSTEM. )

DOCKET NOS.  
W-02234A-00-0775  
WS-02987A-00-0775

At: Phoenix, Arizona  
Date: December 6,  
Filed: Decembe

*Need also  
pg. 65*

DEEDINGS

**DISK  
ENCLOSED**

COURT REPORTING SERVICE, INC.  
Court Reporting  
Suite Three  
2627 North Third Street  
Phoenix, Arizona 85004-1103

Prepared for: DAWNA J. CLAYTON, RPR  
CCR No. 50326

DIVERSIFIED WATER UTILITIES

**CERTIFIED COPY  
(When in red)**

1 separate from the consolidation issue.

2 ALJ STERN: I intend to do something with  
3 that. I legitimately think that everything raised  
4 in the majority of this proceeding are really going  
5 to be resolved, like Mr. Shapiro said, I think  
6 ultimately they'll be resolved in the March  
7 proceeding. I can't see how they wouldn't be.  
8 After that --

9 MR. SULLIVAN: It's a question of how much  
10 injury can occur in between. That's what prompted  
11 the application, Your Honor.

12 ALJ STERN: I would say that the status quo  
13 should remain the same basically and just everyone  
14 mind their own business until that hearing is  
15 resolved. With respect to this well matter, and I  
16 think essentially Ms. Wolfe, correct me if I'm  
17 wrong, if we keep the status as the same until that  
18 proceeding in March and other than that just deal  
19 with this well issue one way or the other, I  
20 haven't decided which way to go with it, I think  
21 that would solve staff's problems, wouldn't it?

22 MS. WOLFE: Yes, if the issues were  
23 consolidated after the well issue was disposed of,  
24 staff would not oppose consolidation.

25 MR. CAMPBELL: I want to make sure I

1 understood what status quo means. Does that mean  
2 we can't talk to WIFA, we can't talk to current  
3 customers to --

4 ALJ STERN: I don't see any reason for your  
5 company to talk to WIFA about another company. If  
6 your company wants to talk to WIFA they're free to,  
7 but unless WIFA is out courting other water  
8 companies to get their information --

9 MR. CAMPBELL: There are public documents  
10 in the WIFA files we would need to look at as part  
11 of the discovery in the case.

12 MR. SULLIVAN: They have already acquired  
13 those as their affidavit indicates, and if we file  
14 any supplements, we will be glad to share those if  
15 that's what they want. What we have concerns about  
16 is there was a public forum to make comments on  
17 pending applications. They didn't make one  
18 comment, neither written or oral during that  
19 process.

20 ALJ STERN: Well, here again, one way or  
21 the other I think, you know, the aroma is here, and  
22 if you're saying the company, one company is  
23 interfering with your company's business, don't  
24 bring it to the Commission. Go to court. And that  
25 is what I am going to tell you again. This is not

1 a proper forum for business interference cases,  
2 okay?

3 MR. SULLIVAN: But it is the proper forum  
4 for interference under 281.B. and 281.A. That's  
5 why we're here.

6 ALJ STERN: We'll take a look at that, but  
7 the other allegations don't belong here.

8 MR. CAMPBELL: I'm sorry, if I might add  
9 one final thought. It would seem to me that based  
10 on those comments that on the restraining order  
11 that was issued last Friday, it should all be  
12 quashed with the exception of the well issue which  
13 the hearing officer has taken under advisement.

14 ALJ STERN: No, I don't think so. I think  
15 status quo-wise, I think we're all better off if  
16 everybody minds their own business, runs their own  
17 utility operation, and if you have to do some  
18 investigation, I guess do some discovery or  
19 something related to the proceeding that's  
20 scheduled for March. I guess that would go  
21 forward. If people feel that it's interfering with  
22 the conduct of their business, as I say, there's a  
23 proper forum for it and it's not here.

24 MR. CAMPBELL: And I would agree. I want  
25 to make sure in conducting our fact finding we

1 don't inadvertently violate an order of the  
2 Commission when we talk to potential witnesses and  
3 third parties.

4 ALJ STERN: Well, I guess it's going to  
5 turn on the facts, and you understand my feeling on  
6 it. I don't think I would see any reason for your  
7 client, let's say, to go down to talk to somebody  
8 at the WIFA office and talk to them about what's  
9 going on in their business. If WIFA needs  
10 information, I would say why don't you talk to  
11 Mr. Jones over at Diversified. He's the man who  
12 has all the answers for Diversified. I can't say  
13 with certainty what the situation is.

14 MR. CAMPBELL: In any event, you are going  
15 to issue an order on our motion to quash and give  
16 us explicit language as to what we can and cannot  
17 do?

18 ALJ STERN: I will try to give you as  
19 explicit as I can in terms of like I say, I think  
20 all parties should tend to their own business, not  
21 interfere in the business of others, and that's the  
22 way I look at it. If staff wishes to file  
23 anything, feel free. I'll take this matter under  
24 advisement on the temporary order and the motion to  
25 quash with respect to the temporary order. With

# **EXHIBIT C**

1 Marty Harper (003416)  
2 Paul M. Briggs (016396)  
3 Kelly J. Flood (019772)  
4 **SHUGHART THOMSON KILROY**  
5 **GOODWIN RAUP, P.C.**  
6 One Columbus Plaza  
7 3636 North Central Avenue, Suite 1200  
8 Phoenix, Arizona 85012  
9 Telephone: (602) 650-2000

10 Attorneys for Johnson Utilities, LLC

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PINAL**

13 **DIVERSIFIED WATER UTILITIES,** )  
14 **INC., an Arizona corporation,** )

15 **Plaintiff,** )

16 **vs.** )

17 **RUSSELL E. BRANDT and JANET A.** )  
18 **BRANDT, husband and wife;** )

19 **REBECCA HOPE BRANDT, a single** )  
20 **woman; MARK A. SZCZEPANIEC and** )

21 **PAMELA J. SZCZEPANIEC, husband** )  
22 **and wife; MICHAEL WILLIAM RICH** )

23 **and MELINDA BETH RICH, husband** )  
24 **and wife; SAN TAN MOUNTAINS** )

25 **LIMITED PARTNERSHIP, an Arizona** )  
26 **limited partnership; NEW MAGMA** )

**IRRIGATION AND DRAINAGE** )  
**DISTRICT, a municipal corporation and** )

**political subdivision of the State of** )  
**Arizona; ROBERT L. LAYTON,** )

**individually and d/b/a FALFA FARMS** )  
**95; PINTO CREEK CO., L.L.C., an** )

**Arizona limited liability company;** )

**JOHN DOES I-X, JANE DOES I-X,** )

NO. CV 2002-00245

**JOHNSON UTILITIES, L.L.C.'S**  
**RESPONSES TO NON-UNIFORM**  
**INTERROGATORIES**

(Assigned to The Honorable William J. O'Neil)

1 to the extent that these requests are duplicative or the information sought is already known by  
2 the Plaintiff.  
3  
4

5 **NON-UNIFORM INTERROGATORIES**

6 **NON-UNIFORM INTERROGATORY NO. 1:** State any and all rights and interests  
7 claimed by you to the Subject Property including the real property classification under which  
8 you claim a right to the Condemnation Property, such as fee owner, life estate, tenant in  
9 common, tenant under lease, etc.  
10

11  
12 **Johnson Utilities, LLC has an agreement with the owners of the Subject Property**  
13 **to purchase the property as a fee owner.**  
14

15 **NON-UNIFORM INTERROGATORY NO. 2:** State the date and manner of the  
16 acquisition of your rights and interests to the Subject Property, whether by purchase,  
17 inheritance, gift, exchange or otherwise and if acquired by purchase or exchange the purchase  
18 price or other consideration given.  
19  
20

21  
22 **Johnson Utilities, LLC acquired its interest in the Subject Property through**  
23 **purchase contract. See the Purchase Agreement previously disclosed.**  
24  
25  
26

1 **NON-UNIFORM INTERROGATORY NO. 3:** Do you know of any individual or  
2 entity which has any interest or claim to the Subject Property that is not a named defendant in  
3 this case? No. If yes, provide the name, address, telephone number of each individual or  
4 entity and describe the specific interest or claim you believe is held by that individual or entity.  
5

6  
7 **NON-UNIFORM INTERROGATORY NO. 4:** Is there a written management  
8 agreement for the ownership and operation of the Subject Property? No. If no written  
9 agreement exists or if the written agreement does not contain all of the management terms and  
10 conditions, provide us the terms and conditions for the management and operation of the  
11 Subject Property not contained in the written agreement.  
12

13 **Johnson Utilities, L.L.C. retains all ownership and operational responsibility**  
14 **under the agreement.**

15  
16 **NON-UNIFORM INTERROGATORY NO. 5:** Describe each license currently held by  
17 you which authorizes you to engage in a particular profession or occupation which has been  
18 issued by any governmental agency, the name and address of the issuing agency, the date the  
19 license was first issued, and the number of the license.  
20

21  
22 **Objection. This interrogatory seeks information that is not relevant and not**  
23 **designed to lead to the discovery of admissible evidence. Without waiving these**  
24 **objections, please see Johnson Utilities, L.L.C.'s response to uniform interrogatory**  
25 **number 4.**  
26

1           The statutory scheme on which Plaintiff bases this action, ARS § 12-1141 et seq.,  
2           may be unconstitutional.

3           Notwithstanding, the acquisition by Diversified of the Subject Property for a  
4           second water supply source for its domestic water delivery system is not a "public  
5           works project" as that term is defined in ARS § 12-1141.5 because upon  
6           information and belief, Diversified's attempted acquisition is not financed in whole  
7           or in part by any "federal agency" or "state public body" as defined by ARS § 12-  
8           1141.7. Monies received by Diversified through a loan from WIFA may not be  
9           used for the acquisition of the Subject Property.

10          **NON-UNIFORM INTERROGATORY NO. 12:**     Provide each and every basis on which  
11          you object to the sale of the Subject Property to Diversified.

12  
13           **The Subject Property is already under a contract to purchase by Johnson Utilities,**  
14           **Inc. so that the well located on the Subject Property may be used as a primary**  
15           **water source for the Skyline Domestic Water Improvement District.**

16  
17  
18          **NON-UNIFORM INTERROGATORY NO. 13:**     Describe each and every meeting you  
19          had with any individual or entity regarding the purchase of the Subject Property by Johnson  
20          Utilities, L.L.C. ("JUL"). If your answer is other than none, please list the party you met with,  
21          the date, subject and substance of any discussions during such meeting and whether such  
22          meeting was by telephone, in person or some other means.

23  
24  
25           **Objection.** The information requested in this interrogatory is overly broad and  
26           unduly burdensome and may be protected by the attorney-client privilege and/ or

1 the work product doctrine. George Johnson has had several meetings with Russ  
2 Brandt regarding the purchase of the Subject Property. However, these meetings  
3 are too numerous to recall specific dates, times, persons in attendance, subject  
4 matter discussed. Some of the meetings were in person, others occurred by  
5 telephone. Eventually a Purchase Agreement was drafted, the date of which  
6 indicates the general time frame during which these conversations occurred. Mr.  
7 Johnson may be able to provide additional information upon examination at  
8 deposition when the questions can be more focused.

9 **NON-UNIFORM INTERROGATORY NO. 14:** If JUL, its member(s), manager(s),  
10 officer(s) or agent(s) has made an offer for the purchase of all or a part of the Subject Property  
11 or property which includes the Subject Property in the past three (3) years from this date,  
12 describe the property which JUL offered to purchase, the date of the offer or listing and the  
13 price and terms of the offer.

14  
15  
16 **See Purchase Agreement previously disclosed.**

17  
18 **NON-UNIFORM INTERROGATORY NO. 15:** State in detail all facts which support  
19 your claim that JUL entered into a purchase agreement for the purchase of the Subject Property  
20 including, without limitation, whether there is a written agreement, the date it was signed by  
21 JUL and the name of the person and their position held who signed on behalf of JUL, and the  
22 name of each person signing on behalf of the owner of the Subject Property, the capacity of the  
23 signer (e.g. attorney-in-fact, individually, etc.) and the date it was signed by each of the  
24 owners, the purchase price, the terms, and the current status of the transaction. Additionally,  
25  
26

1 provide the name of the escrow agent, title company, survey company and or any other real  
2 estate consultant, attorney or other advisor participating in the preparation of the agreement,  
3 escrow or transaction and the escrow number.  
4

5 **See the Purchase Agreement previously disclosed. Attorney Gary Drummond**  
6 **participated in the drafting of the agreement. There is no escrow agent, title**  
7 **company, survey company or any other real estate consultant or other advisor**  
8 **participating in the purchase. The terms of the agreement have not changed.**

9 **NON-UNIFORM INTERROGATORY NO. 16:** List and describe in detail each and  
10 every meeting JUL, its member(s), manager(s), officer(s) or agent(s) had with any person  
11 regarding the purchase of any or all of the Subject Property. If your answer is other than none,  
12 please list the party met with, the identity of the representative of JUL at each such meeting,  
13 the date, the subject and substance of any discussions at each such meeting and whether each  
14 such meeting was by telephone, in person or some other means. Additionally, provide the  
15 name, address and telephone number of the escrow agent, title company, survey company and  
16 or any other real estate consultant, attorney, engineer, or other advisor participating in the  
17 discussion or transaction.  
18  
19  
20

21 **Objection. The information requested in this interrogatory is overly broad,**  
22 **unduly burdensome, not relevant to this action, is not likely to lead to the discovery**  
23 **of admissible evidence and may be protected by the attorney-client privilege and/**  
24 **or the work product doctrine. Without waiving these objections, see Johnson**  
25 **Utilities, L.L.C.'s answer to interrogatory number 13.**  
26

1 **NON-UNIFORM INTERROGATORY NO. 17:** Describe in detail the interest, if any,  
2 which JUL had in the Subject Property on March 14, 2002 and currently has in the Subject  
3 Property.  
4

5  
6 **Long before March 14, 2002, the owners of the Subject Property had agreed to sell**  
7 **the Subject Property to Johnson Utilities, L.L.C. The interest that Johnson**  
8 **Utilities, L.L.C. currently has in the Subject Property remains unchanged since**  
9 **March 14, 2002. See the Purchase Agreement previously disclosed.**  
10

11 **NON-UNIFORM INTERROGATORY NO. 18:** Has any testing of the well condition or  
12 quality been conducted by any person in the last ten years? **Johnson Utilities, L.L.C. cannot**  
13 **answer this interrogatory for the time period before its involvement in the well.**  
14 **Nevertheless, Johnson Utilities, L.L.C. tested the water on January 14, 2002. If your**  
15 **answer is other than no,**

16  
17 (a) Describe each such test, including the date, the person conducting the test, and  
18 the results.  
19

20 **Nitrate test.**  
21 **January 14, 2002.**  
22 **Aquatic Consulting & Testing, Inc.**

23 (b) Describe any written reports which were prepared in conjunction with such  
24 testing.

25 **See Report of Aquatic Consulting & Testing, Inc. attached hereto.**  
26

1 **NON-UNIFORM INTERROGATORY NO. 19:** State in detail all the reasons, if any,  
2 you believe the current use of the Subject Property is more necessary than the use for the  
3 Plaintiff's proposed taking.  
4

5  
6 **Johnson Utilities, L.L.C. would use the Subject Property as the primary water**  
7 **source for the Skyline Domestic Water Improvement District and is therefore**  
8 **more necessary than the proposed secondary use as a back-up well by Diversified.**  
9

10 **NON-UNIFORM INTERROGATORY NO. 20:** State in detail all the reasons, if any,  
11 you believe any other potential use of the Subject Property, including but not limited to the  
12 potential use to which the Subject Property would be put if acquired by JUL, is more necessary  
13 than the use for the Plaintiff's proposed taking.  
14

15  
16  
17 **See Johnson Utilities, LLC's answer to interrogatory number 19.**  
18  
19

20 **NON-UNIFORM INTERROGATORY NO. 21:** State your opinion of the amount of just  
21 compensation you claim for the condemnation of the Subject Property as of the date of the  
22 summons in this case, March 14, 2002, including the fair market of the Subject Property and  
23 the severance damages, if any, resulting from the taking, and state the basis for your opinion.  
24 If you rely on any sales of comparable property, state the names of the parties to such sale, the  
25  
26

1 **Objection.** The interrogatory may imply that a valid agreement for the sale of the  
2 **Subject Property to Johnson Utilities, L.L.C. does not exist. Johnson Utilities,**  
3 **L.L.C. objects to any such implication or characterization. Without waiving this**  
4 **objection, please see answer to interrogatory number 19. In addition, Johnson**  
5 **Utilities, L.L.C. could supply water to other entities as necessary.**

6  
7 **NON-UNIFORM INTERROGATORY NO. 24:** List and describe in detail all purposes  
8 on November 15, 2000, that JUL intended to use any or all of the Subject Property on or about  
9 November 15, 2000.

10 **See answer to interrogatory number 23.**  
11

12  
13  
14 **NON-UNIFORM INTERROGATORY NO. 25:** List and describe in detail all reasons as  
15 of the date of your answers to these interrogatories and as of March 14, 2002 that JUL seeks to  
16 purchase any or all of the Subject Property.  
17

18  
19 **See answer to interrogatory number 23.**  
20

21  
22  
23 **NON-UNIFORM INTERROGATORY NO. 26:** Is JUL acting in this case as a  
24 representative of Pinal County, a political subdivision of the State of Arizona? If your answer  
25 is other than no, provide the basis for JUL's authority to act in such capacity, any limitations or  
26

1 date of each sale, the legal description or parcel number (with the name of the county) of each  
2 comparable property, and the number assigned by the County Recorder to each deed  
3 transferring title.  
4

5  
6 **Unknown at present. Will supplement.**  
7

8  
9  
10 **NON-UNIFORM INTERROGATORY NO. 22:** Describe in detail each and every  
11 attempt or inquiry JUL, its member(s), manager(s), officer(s) or agent(s) made to Diversified,  
12 its officers or directors or agents to acquire or purchase either directly or indirectly, Diversified  
13 or its assets. If your answer is other than none, please identify the party making the inquiry or  
14 attempt, the date of such action, and the subject and substance of any discussions regarding  
15 such action and whether such action was by telephone, in person or some other means.  
16

17 **Approximately 3 to 4 years ago, Scott Gray requested a meeting through Johnson**  
18 **Utilities, L.L.C.'s attorney, Tom Campbell, about the possibility of Johnson**  
19 **Utilities, L.L.C. purchasing Diversified Water Utilities, Inc. Some telephonic**  
20 **discussions ensued but nothing resulted from them.**  
21

22 **NON-UNIFORM INTERROGATORY NO. 23:** List and describe in detail all reasons  
23 on November 15, 2000, that JUL sought to purchase any or all of the Subject Property pursuant  
24 to the proposed Purchase Contract dated November 15, 2000.  
25  
26

1 restrictions upon its authority to act in that capacity, and describe in detail its activities to date  
2 as a representative of Pinal County and its anticipated activities as a representative of Pinal  
3 County.  
4

5  
6 **No.**  
7

8 **NON-UNIFORM INTERROGATORY NO. 27:** Is JUL acting in this case as a  
9 representative of Skyline Domestic Water Improvement District, a purported domestic water  
10 improvement district? If your answer is other than no, provide the basis for JUL's authority to  
11 act in such capacity, any limitations or restrictions upon its authority to act in that capacity, and  
12 describe in detail its activities to date as a representative of Skyline Domestic Water  
13 Improvement District and its anticipated activities as a representative of Skyline Domestic  
14 Water Improvement District, a purported domestic water improvement district.  
15  
16  
17

18 **No.**  
19

20  
21 **NON-UNIFORM INTERROGATORY NO. 28:** Is JUL acting only in its individual  
22 capacity in this case? If your answer is other than no, provide the basis for JUL's authority to  
23 act in such capacity, any limitations or restrictions upon its authority to act in that capacity.  
24  
25

26 **Yes, pursuant to the managing member's decision without limitation.**

# **EXHIBIT D**

4

w/c

BOARD of SUPERVISORS



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

DATE: 07/19/01 TIME: 1609  
FEE : 0.00  
PAGES: 4  
FEE NO: 2001-032677

### WATER SERVICE, SUPPLY AND MANAGEMENT AGREEMENT

This Water Service, Supply and Management Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between Skyline Domestic Water Improvement District (hereinafter referred to as "SDWID"), an improvement district organized pursuant to A.R.S. §48-905(C), Shea Utility Services Company, Inc., (hereinafter referred to as "Shea Services"), and Johnson Utilities L.L.C., an Arizona public service company (hereinafter referred to as "Johnson Utilities").

#### WITNESSETH

WHEREAS, the Skyline Domestic Water Improvement District was organized pursuant to the laws of the State of Arizona as herinabove set forth, with boundaries established in Pinal County as more particularly set forth in Exhibit A,

WHEREAS, the Pinal County Board of Supervisors serves as the Board of Directors for "SDWID" and desires to secure a water supply to the District, as well as management of the water services once in place; and

WHEREAS, an agreement has been reached with "Johnson Utilities" to supply water to "SDWID" and with "Shea Utilities" to manage the water service within the district.

NOW, THEREFORE, it is hereby agreed as follows:

1. "Johnson Utilities" shall construct a water delivery system consisting of all water lines, meters, pumps, valves, connections, and storage facilities to supply "SDWID" water from "Johnson Utilities" water service system as approved by the Pinal County Engineer.
2. "Johnson Utilities" shall provide services through six-inch (6") or larger meter(s) consistent with requirements of Arizona Corporation Commission and/or the County Planning and Development Services Department, at "Johnson Utilities" tariffed rates for these services within their Certificated area.
3. "Johnson Utilities" shall provide Arizona Department of Environmental Quality (ADEQ) approved quantities and quality of water to "SDWID" at mutually agreed

upon location(s) within "Johnson Utilities" Certificate of Convenience and Necessity.

4. No construction costs shall be borne by "SDWID." However, "Shea Services" may recoup those costs by charging Hook-Up Fees to be collected from "SDWID" Developers or Customers. These fees shall not exceed "Johnson Utilities" tariffed rates for these services within their Certificated area.
5. The water delivery system including all components and facilities within "SDWID" shall be constructed within established easements or rights-of-way or upon property leased, purchased, or otherwise set aside for such use. These "Easements" shall provide "Shea Services" access to the "SDWID" system for purposes of repair and maintenance.
6. "Shea Services" shall manage and coordinate all aspects of performance by "Johnson Utilities" resulting from this agreement and once constructed, manage all daily operations in providing water service to "SDWID" which include the following:
  - 6.1 Provide the "ADEQ" certified operator for "SDWID."
  - 6.2 Conduct all water quality/system tests required by all applicable rules and regulations.
  - 6.3 File all applicable regulatory agency requirements, including but not limited to those for ADEQ, ADWR, ADOR, and Pinal County.
  - 6.4 Inspect, maintain, repair, and operate "SDWID's" distribution facilities.
  - 6.5 Negotiate and prepare all Hook-Up Fee Agreements (HUF's) and on-site Line Extension Agreements (LXA's) with developers as approved by "SDWID."
  - 6.6 Maintain all records and track all data for LXA refunds.
  - 6.7 Inspect, manage, and supervise all on-site construction by developers.
  - 6.8 Provide a customer service office within a ten (10) mile distance from "SDWID."
  - 6.9 Provide all customer service functions related to initiating, operating, and maintaining water services "SDWID" including: taking orders, receiving payments, responding to complaints, answering inquiries related to water services and/or billing; provide on-site meter hook-up, maintenance, water shut offs, turn ons, as well as any other service functions as deemed necessary by "SDWID."
  - 6.10 Recommend appropriate customer rates to the "SDWID" Board of Directors not to exceed "Johnson Utilities" tariffed rates.
  - 6.11 Install meters and collect/refund meter charges set by the Board of Directors not to exceed "Johnson Utilities" tariffed rates.
  - 6.12 Read meter, collect bills for water use pursuant to rates established by the "SDWID" Board of Directors not to exceed "Johnson Utilities" tariffed rates.

6.13 Pay all expenses and bills of "SDWID" as authorized by the "SWDID" Board of Directors.

7. "Shea Services" shall fund all operations of "SDWID" and retain those portions of fees collected on behalf of "SDWID" directly attributable to the operation and maintenance expenses. Fees collected which exceed the costs of operation of "SDWID" shall be divided equally between "SDWID" and "Shea Services."
8. "Shea Services" shall be responsible for any and all shortfalls in operating expenses incurred by "SDWID" during the period of this Agreement.
9. "Shea Services" shall pay all costs of acquisition of property and/or rights including any condemnation action initiated by "SDWID."
10. All parties to this Agreement acknowledge that rates and charges are subject to change periodically upon application by "Shea Services" and approval by the "SDWID" Board of Directors at "Johnson Utilities" tariffed rates. "Johnson Utilities" shall provide water at the rates in effect for its potable supplies in areas within "Johnson Utilities" Certified area.
11. "Shea Services" and "Johnson Utilities" agree that they shall indemnify, defend and hold harmless the County, its elected officials, officers, departments, employees, commissions and agents, from and against any and all suits, actions, legal proceedings, claims, demands, attorney fees, costs of litigation, or damages of any kind arising out of this Contract which are attributed to the alleged acts or omissions of "Shea Services" or "Johnson Utilities", their agents, employees, or anyone acting under either party's direction or on their behalf, whether intentional or negligent, in connection with or incident to this Agreement.
12. "SDWID" shall have no employees as a result of this Agreement.
13. "SDWID" shall not surrender ownership of its facilities to either "Johnson Utilities" or "Shea Services" as a result of this Agreement.
14. This Agreement shall continue in full force and effect for thirty (30) years from the day and year first above written and may be extended or renewed at any time during its term upon the request and mutual agreement of the parties.
15. This Agreement contains the entire agreement of the parties and may not be changed, modified or rescinded except in writing, signed by all parties hereto.
16. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

PINAL COUNTY, a political  
subdivision of the State of Arizona,

X Jimmie B. Kerr  
Jimmie B. Kerr, Chairman  
Board of Supervisors

Johnson Utilities Company

BY: [Signature]  
George Johnson, President

ATTEST:

Stanley D. Griffis  
Stanley D. Griffis, Ph.D., Clerk  
Board of Supervisors

Shea Utility Services Company

BY: Barbara Hodges  
Barbara Hodges, Managing  
Member

Date: 7-11-01

CONSENTED to and APPROVED as to form this 1/01

day of July, 2001.

ROBERT CARTER OLSON  
PINAL COUNTY ATTORNEY

[Signature]  
Rick V. Husk  
Deputy County Attorney

UNOFFICIAL

**EXHIBIT E**



1 BLACK and WHITE CORPORATIONS )  
2 I-X, )  
3 Defendants. )

4 Russell E. Brandt, Janet A. Brandt, Rebecca Hope Brandt, Mark A. Szczepaniec,  
5 Pamela J. Szczepaniec, Michael William Rich, Melinda Beth Rich, Robert L. Layton,  
6 individually and d/b/a Falfa Farms 95, Pinto Creek Co., L.L.C. (collectively referred to as  
7 "Defendants"), for their opening brief on the law to be applied in this case state as follows:  
8

9 **I. BACKGROUND**

10 This litigation arises out of Diversified Water Utilities, Inc.'s failed attempt to purchase  
11 the subject property from its previous owners. The subject property in dispute was previously  
12 owned in undivided interests among Russell E. Brandt, Janet A. Brandt, Rebecca Hope Brandt,  
13 Mark A. Szczepaniec and Pamela J. Szczepaniec.<sup>1</sup> Michael William Rich and Melinda Beth  
14 Rich purchased 10 acres adjoining the subject property and still owe the former Property  
15 Owners on the underlying note. Upon information and belief, Mr. and Mrs. Rich have no legal  
16 interests in the well on the Subject Property. Robert L. Layton owns and operates Falfa Farms  
17 95 and is a member of Pinto Creek Co., L.L.C. Through a lease entered with the Property  
18 Owners, Mr. Layton is entitled to farm hundreds of acres of land in the general area, including  
19 the subject property. He has rights to water pumped from a well located on the subject  
20 property for farming uses.  
21  
22  
23

24  
25 <sup>1</sup> These five individuals are collectively referred to as the "former property Owners" for ease of  
26 reference.

1 Many months ago, the president of Diversified Water Utilities, Inc. ("Diversified")  
2 Scott Gray, had multiple conversations with Russ Brandt, who was acting on behalf of the  
3 Property Owners, about purchasing the property. They nearly had an agreement but the  
4 proposed transaction ultimately fell through. The Property Owners subsequently entered an  
5 agreement to sell the subject property to Johnson Utilities, L.L.C., a public service corporation  
6 authorized to do business as a water delivery corporation. Diversified likely did not know of  
7 this agreement prior to filing its complaint.  
8  
9

10 Pursuant to the terms of that agreement, the Subject Property was recently conveyed by  
11 the former Property owners to Johnson Utilities, LLC. Johnson Utilities subsequently  
12 transferred, or is expected to transfer, the Subject Property to the Skyline Domestic Water  
13 Improvement District ("Skyline").<sup>2</sup> Skyline is a governmental entity. Diversified, on the other  
14 hand, is a public utility company. Under Arizona law, Skyline enjoys a higher status than  
15 Diversified, with superior rights of eminent domain for purposes of furnishing domestic water  
16 service.  
17

18 Johnson Utilities has a contract to manage the newly formed Skyline District. The  
19 Skyline District was formed at the request of 100% of the property owners within the District  
20 who wished to receive water and were not presently being furnished water from any other  
21 source. Johnson Utilities will use the well located on the Subject Property as its primary  
22  
23

---

24 <sup>2</sup> At the time of the hearing, Skyline will be the owner of the Subject Property and the issue  
25 will therefore be whether Diversified has the right to condemn the Subject Property from the  
26 Skyline District. Skyline will make an appearance and object to Diversified's action in the  
very near future.

1 source of water to be furnished to the customers of the Skyline District. It will also be  
2 available for other users on an as-needed basis subject to normal commercial negotiations. By  
3 contrast, Diversified plans to use the well located on the Subject Property as a backup source  
4 of water for its distribution system.  
5

6 **II. APPLICABLE LAW**

7 As a preliminary matter, this Court will need to decide whether the Subject Property  
8 owned by Skyline may be condemned by Diversified. The following provisions of Arizona  
9 law are determinative of this issue.  
10

11 **A. Under ARS § 12-1114, The Subject Property Is Not Subject To**  
12 **Condemnation.**

13 Pursuant to A.R.S. § 12-1114, private property subject to condemnation includes, *inter*  
14 *alia*: (1) lands belonging to the state or any county, city, town or village, not appropriated to  
15 some public use; (2) property appropriated to public use; (3) all classes of private property not  
16 enumerated, including property for use in water or water rights, taken for public use when the  
17 taking is authorized by law.  
18

19 County water improvement districts organized under the laws of Arizona are considered  
20 municipal corporations. See A.R.S. § 48-906.<sup>3</sup> Therefore, the Subject Property owned by  
21 Skyline is the equivalent of, and constitutes, "land belonging to, *inter alia*, a county or city."  
22

23 <sup>3</sup> ARS § 48-906, provides, *inter alia*, that: following the hearing, the district shall be  
24 established by the Board if after consideration of all objections, the petition is signed by the  
25 required property owners and that the public convenience, necessity or welfare will be  
26 promoted by the establishment of a district. . . . A newly established district shall be a body  
corporate with the powers of a municipal corporation for the purposes of carrying out the  
provisions of this article.

1 However, A.R.S. §12-1114(1) only allows for condemnation of such land when it is not  
2 appropriated to public use. The Subject Property owned by Skyline is appropriated to public  
3 use because it will be used to furnish water to the residents of the Skyline District. See  
4 *Citizens Utilities Water Co., v. Superior Court*, 108 Ariz. 296, 497 P.2d 55 (1972) (“The courts  
5 in Arizona have long followed the broad view of public use which has been defined to include  
6 any of the following: use by the public benefit, public advantage or convenience, promoting  
7 the public welfare or promoting the general objects and purposes of the governmental entity. It  
8 is not necessary to demonstrate that the entire community will directly enjoy or participate in  
9 the improvement”). Under § 12-1114(1), the Subject Property is therefore not subject to  
10 condemnation.  
11  
12

13  
14 Alternatively, if the Subject Property owned by Skyline is deemed to fall under prong  
15 (2) of § 12-1114, as “property appropriated to public use,” then it would arguably be subject to  
16 condemnation. In such case, the issue for this Court will be whether Diversified’s use of  
17 Subject Property is a “more necessary” use than Skyline’s use, as discussed below.  
18

19 **B. ARS § 12-1112 Requires That Diversified Show It Has A “More  
20 Necessary Use” Than Skyline.**

21 Under ARS 12-1114(2), “property appropriated to public use” is subject to  
22 condemnation. However, the general rule is that property devoted to one public use may be  
23 taken for another public use by another or by the same public body if the new proposed use is a  
24 higher public use, and a more necessary public use, and will serve a greater public interest. See  
25  
26

1 *Santa Cruz Irrigation District v. City of Tucson*, 108 Ariz. 152 (1972). *See also City of Mesa*  
2 *v. Salt River Project Agr. Impr. & P. Dist.*, 92 Ariz. 91 (1962).

3  
4 Public utility companies wishing to condemn property must utilize the general  
5 condemnation statutes, A.R.S. § 12-1112 *et seq.* A.R.S. §12-1112 provides:

6 Except as provided by § 28-7102, before property may be taken, it  
7 shall appear that:

- 8 (1) The use to which the property is to be applied is a use  
9 authorized by law.  
10 (2) The taking is necessary to such use.  
11 (3) If the property is already appropriated to some public use, the  
12 public use to which it is to be applied is a more necessary  
13 public use.

14 A.R.S. § 12-1112(3) requires that in the event the property sought to be condemned is  
15 already being put to a public use, the public utility company must show that its use is a "more  
16 necessary use." The determination of which public use is the "more necessary" requires an  
17 examination of the two entities—the condemnor and the condemnee. *See Santa Cruz*  
18 *Irrigation District v. City of Tucson*, 108 Ariz. 152, 494 P.2d 24 (1972). If the particular  
19 public use is incidental to the basic purpose of the condemnee, then the services are held to be  
20 a more necessary public use when they are the primary purpose of the condemnor. *Id.* For  
21 instance, service of domestic water is incidental to the primary purpose of providing water by  
22 an irrigation district for agricultural uses, but it is one of the fundamental purposes for the  
23 incorporation of cities and towns. Hence, a municipality can condemn the domestic water  
24 system of an irrigation district. *See id.*

1 Diversified admits in its Complaint that it intends to use the well located on the Subject  
2 Property as merely a "backup" water source for its distribution system. Skyline, however,  
3 intends to use the well as its primary source of water from which to service the residents of the  
4 Skyline District, all of whom are currently without water. Skyline's use of the Subject  
5 Property is more than incidental to its basic purpose, and a more necessary use than that of  
6 Diversified. Because Diversified's use of the Subject Property is merely incidental and not a  
7 "more necessary" public use than Skyline's, it is precluded by law from condemning the  
8 Subject property.  
9  
10

11 Significantly, under A.R.S. § 12-1112, before this Court can even determine whether  
12 Diversified's use is a more necessary use, Diversified first has the burden of demonstrating that  
13 the proposed use of the condemned property is authorized by law and that the taking is  
14 necessary to such use. See A.R.S. § 12-1112(1) and (2); *City of Phoenix v. McCullough*, 24  
15 Ariz. App. 109, 112-13, 536 P.2d 230, 242-43 (1975).<sup>4</sup> Plaintiff must present competent  
16 evidence concerning the specific use to which the property will be put and when such use shall  
17 take place. See *id.* at 113, 536 P.2d at 243. If property sought to be condemned will not within  
18 a reasonable time be used for the purpose contemplated by the Plaintiff, it is not "necessary"  
19 and cannot be the subject of a taking. See *id.*  
20  
21  
22

---

23 <sup>4</sup> Arizona Constitution, Article II, Section 17 provides:

24 Whenever an attempt is made to take private property for a use alleged to be  
25 public, the question whether the contemplated use be really public shall be a  
26 judicial question, and determined as such without regard to any legislative  
assertion that the use is public.

1 As a quasi-governmental entity, Plaintiff must provide substantial evidence that  
2 supports a finding of necessity. *See, e.g., Tucson Community Development and Design Center,*  
3 *Inc. v. City of Tucson*, 131 Ariz. 454, 460, 641 P.2d 1298, 1304 (App. 1981) (*citations*  
4 *omitted*). At trial, a Court will review the Plaintiff's evidence concerning necessity to  
5 determine if substantial evidence exists to support necessity, and if the Plaintiff's  
6 determination of necessity was arbitrary, capricious, or fraudulent. *See id.* The Court weighs  
7 the evidence to determine whether substantial evidence exists to support a finding of necessity.  
8  
9 *Id.*

10  
11 Moreover, there must be an expectation that the property to be acquired will be devoted  
12 to a public use within a reasonable time after the taking. Condemnors are prohibited from  
13 taking property for a possible need at some remote future time. What is a reasonable time  
14 depends on the circumstances of the particular case. *See City of Phoenix v. McCullough*, 24  
15 Ariz. App. 109 (1975) (the proposed use of property was unreasonable, speculative and remote  
16 as a matter of law because the use was going to be changed, would not occur sooner than 15  
17 years, and perhaps as remotely as 46 years). Given Diversified's intended use of the well as  
18 merely a *secondary* source of water, it is quite possible that the use of the well may not be  
19 needed for some time, or that the well may never be used at all. By contrast, Skyline's use of  
20 the well located on the Subject Property as its primary source of water for the Skyline District  
21 is imminent.  
22  
23  
24  
25  
26

1 C. Skyline, not Diversified, has a superior right to ownership of the  
2 Subject Property.

3 Under Arizona law, Skyline is a County Water Improvement District with all the rights  
4 and powers of a municipal corporation for purposes of eminent domain. See ARS 48-906.<sup>5</sup>  
5 As a municipal corporation, Skyline has the absolute right to condemn the service area and  
6 property of a public utility pursuant to the special enabling statutes for municipal corporations,  
7 ARS § 48-909 and § 9-515 *et seq.*<sup>6</sup>  
8

9  
10 <sup>5</sup> ARS § 48-906, provides, *inter alia*, that: A newly established [county improvement] district  
11 shall be a body corporate with the powers of a municipal corporation for the purposes of  
12 carrying out the provisions of this article.

13 <sup>6</sup> ARS §48-909(D) provides:

14 An improvement district which proposes to provide domestic water service within the certificated area  
15 of a public service corporation serving domestic water shall provide just compensation to the public  
16 service corporation pursuant to 9-516 for the facilities or certificated area taken.

17 ARS § 9-515 provides, in pertinent part, that:

18 (A) When a municipal corporation and the residents thereof are being served under an existing  
19 franchise by a public utility, the municipal corporation, before constructing, purchasing, acquiring or  
20 leasing, in whole or in part, a plant or property engaged in the business of supplying services rendered  
21 by such public utility, shall first purchase and take over the property and plant of the public utility.

22 ARS § 9-516 provides:

23 (A) It is declared the public policy of the state that when adequate public utility service under  
24 authority of law is being rendered in any area, within or without the boundaries of a city or town, a  
25 competing service and installation shall not be authorized, instituted, made or carried on by a city or  
26 town unless or until that portion of the plant, system and business of the utility used and useful in  
rendering such service in the area in which the city or town seeks to serve, has been acquired.

(B) The city or town which seeks to acquire the facilities of a public service corporation shall have  
the right to do so under eminent domain. Such action shall be brought and prosecuted in the same  
manner as other civil actions.

...  
(D) It is declared the public policy of the state that when a city or town has purchased the property  
or plant of a public utility serving in an area within or without the boundaries of the city or town  
pursuant to this article, the corporation commission shall not be authorized or empowered to grant a  
new certificate of convenience and necessity or franchise to any person, firm or corporation to provide  
the same kind of public utility service within the area or territory previously authorized to said public  
utility under its certificate of convenience and necessity or franchise, but if the city or town refuses to  
provide utility service to a portion or part of the area or territory previously authorized to the public

1 Unlike Diversified, Skyline need not bring its action pursuant to the general  
2 condemnation statutes, A.R.S. § 12-1112 *et seq*, and therefore need not show that its use is a  
3 more necessary use prior to taking. It logically follows therefore that, as between Diversified  
4 and Skyline, Skyline has a superior right to the Subject Property.  
5

6 **D. Diversified is not engaged in a public works project.**

7 Diversified likely will assert that its condemnation action is not brought pursuant to the  
8 general condemnation statute requiring proof of a “more necessary use,” but rather is governed  
9 by the special enabling statute for “public works projects” found in A.R.S. § 12-1141, *et seq*.  
10 This assertion, however, is misplaced. Diversified may not utilize this statute because it fails  
11 to meet the statute’s definition of a “public works project.”  
12

13 Diversified is not engaged in or about to engage in a “public works project” as that term  
14 is defined in ARS § 12-1141.5 and therefore is not an “authorized corporation” as that term is  
15 defined in ARS § 12-1141.1. The acquisition by Diversified of the Subject Property for a  
16 second water supply source for its domestic water delivery system is not a “public works  
17 project” as that term is defined in ARS § 12-1141.5 because Diversified’s attempted  
18 acquisition is not financed in whole or in part by any “federal agency” or “state public body”  
19  
20

21  
22 utility, the corporation commission may issue a new certificate of convenience and necessity or  
franchise to a public utility to provide utility service in that portion or part of the area or territory.

23 ARS § 9-522 provides, in pertinent part, that:

24 (A) In addition to its other powers, a municipality may:

25 1. Subject to the requirements and restrictions of 9-515 through 9-518, within or without  
its corporate limits, construct, improve, reconstruct, extend, operate, maintain and acquire, by gift,  
26 purchase or the exercise of the right of eminent domain, a utility undertaking or part thereof, and  
acquire in like manner land, rights in land or water rights in connection therewith.

1 as defined by ARS § 12-1141.7. The monies received by Diversified through a loan from  
2 WIFA may not be used for the acquisition of the Subject Property. This action, therefore, is  
3 governed by the general condemnation statute.  
4

5 Even assuming, *arguendo*, that this action was deemed governed by A.R.S. § 12-1141 *et*  
6 *seq.*, Diversified would still be unable to condemn the Subject Property. Condemnation  
7 actions brought under the special statute for public works projects, A.R.S. § 12-1141, are  
8 nevertheless limited by the provisions A.R.S. § 12-1114 as to what types of property are  
9 subject to condemnation. For the reasons stated above, under A.R.S. § 12-1114 the Subject  
10 Property is not subject to condemnation. Moreover, Skyline's status as a governmental entity  
11 gives it a superior right to the Subject Property, regardless which statute governs Diversified's  
12 condemnation action.  
13  
14

15 **E. Diversified has no right to immediate possession.**

16 Lastly, one of the issues this Court will likely be asked to decide is whether Diversified  
17 is entitled to immediate possession of the Subject Property pending a final determination on the  
18 merits. Immediate possession is available only to the state, its subdivisions, and municipal  
19 corporations. The right of way clause of Article II, Section 17 of the Arizona Constitution  
20 requires an advance jury determination of damages (unless the jury be waived) before a  
21 condemnor other than a municipal corporation takes possession of property by condemnation.  
22 *Hughes Tool Co. v. Superior Court of County of Pima*, 91 Ariz. 154, 370 P.2d 646 (1962).  
23 (statute authorizing immediate possession cannot be applied in a condemnation proceeding  
24 brought by a non-municipal corporation).  
25  
26

1 In this case, Diversified is not a municipal corporation and thus is not entitled to  
2 immediate possession.

3  
4 **CONCLUSION**

5 Diversified seeks to condemn property that is not subject to condemnation because the  
6 property is already appropriated to a public use by Skyline. Additionally, Diversified's  
7 proposed use of the subject property as a back-up well is not more necessary than Skyline's use  
8 as the primary source of water to service its customers. Moreover, Skyline's right the subject  
9 property is superior to Diversified's because Skyline is a true municipal corporation while  
10 Diversified is a private company cloaked with only quasi-governmental powers. This Court  
11 should apply the aforementioned legal principles to this case and dismiss Diversified's  
12 condemnation action in its entirety.  
13

14  
15 DATED this 30th day of November, 2002.

16 **SHUGHART THOMSON KILROY**  
17 **GOODWIN RAUP, P.C.**

18  
19 By 

20 Marty Harper  
21 Paul M. Briggs  
22 Kelly J. Flood  
23 3636 North Central Avenue, Suite 1200  
24 Phoenix, Arizona 85012  
25 Attorneys for Defendants

26 ORIGINAL filed with the Clerk of the  
Pinal County Superior Court this  
30th day of November, 2002,

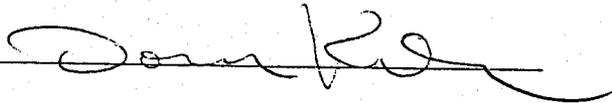
1 COPY delivered this same date to:

2 The Honorable William J. O'Neil  
3 Pinal County Superior Court  
4 31 North Pinal Street, Building E  
5 Florence, Arizona 85232

6 COPY of the foregoing mailed this  
7 30th day of November, 2002 to:

8 Leonard M. Bell, Esq.  
9 BELL LAW OFFICE  
10 365 East Coronado, Suite 200  
11 Phoenix, Arizona 85004  
12 Attorney for Plaintiff

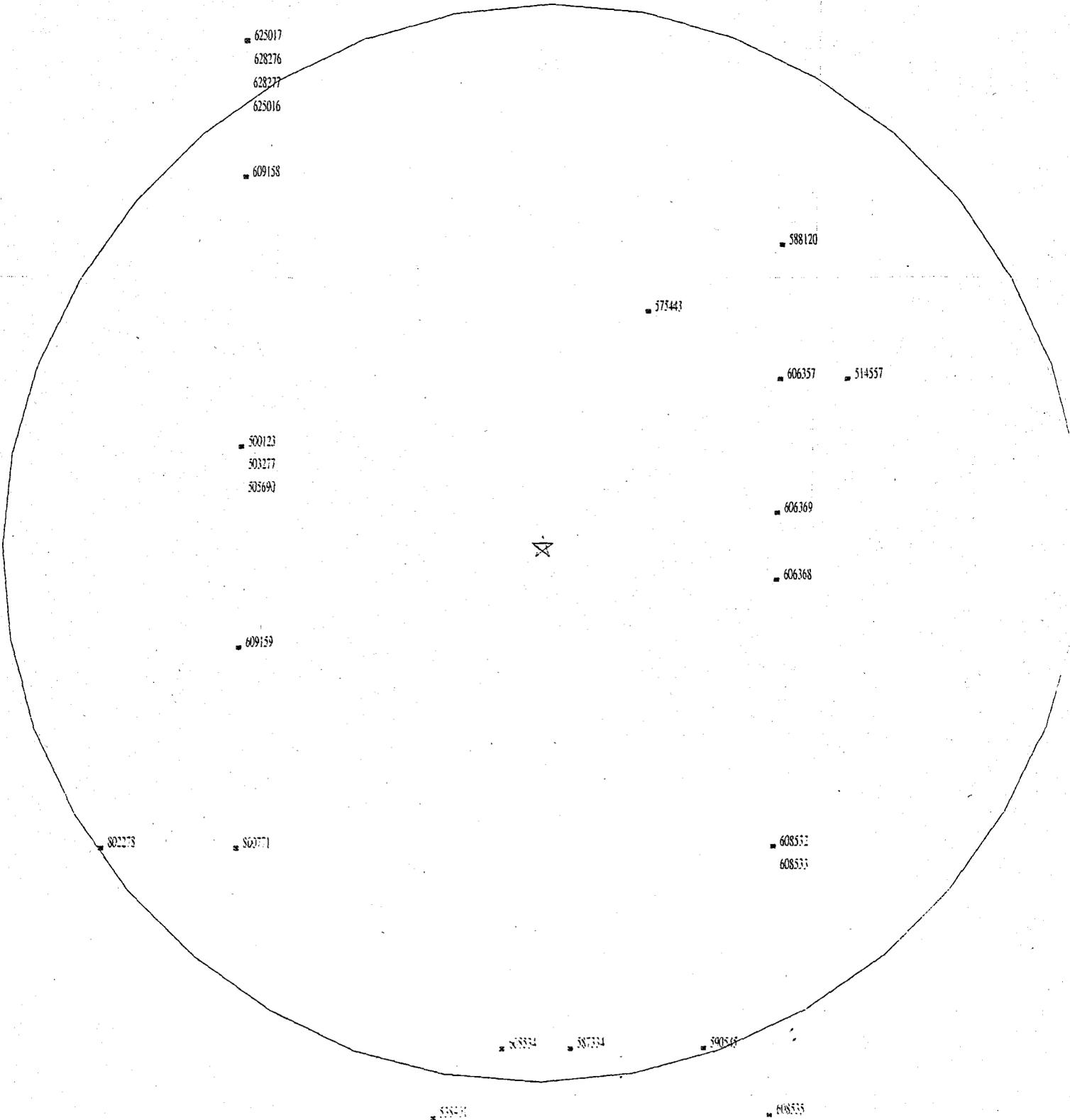
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# **EXHIBIT F**



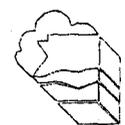
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38 D(3-8)16 DBD	55-627096	14-JUN-82	ELLSWORTH LND-LIVEST	1010	NON-EXEMPT	1000	16	518	1450			
39 D(3-8)23 BAA	55-603372	21-JAN-82	WOLFCOR,	730	NON-EXEMPT	711	18	0	0			
40 Count:	39											



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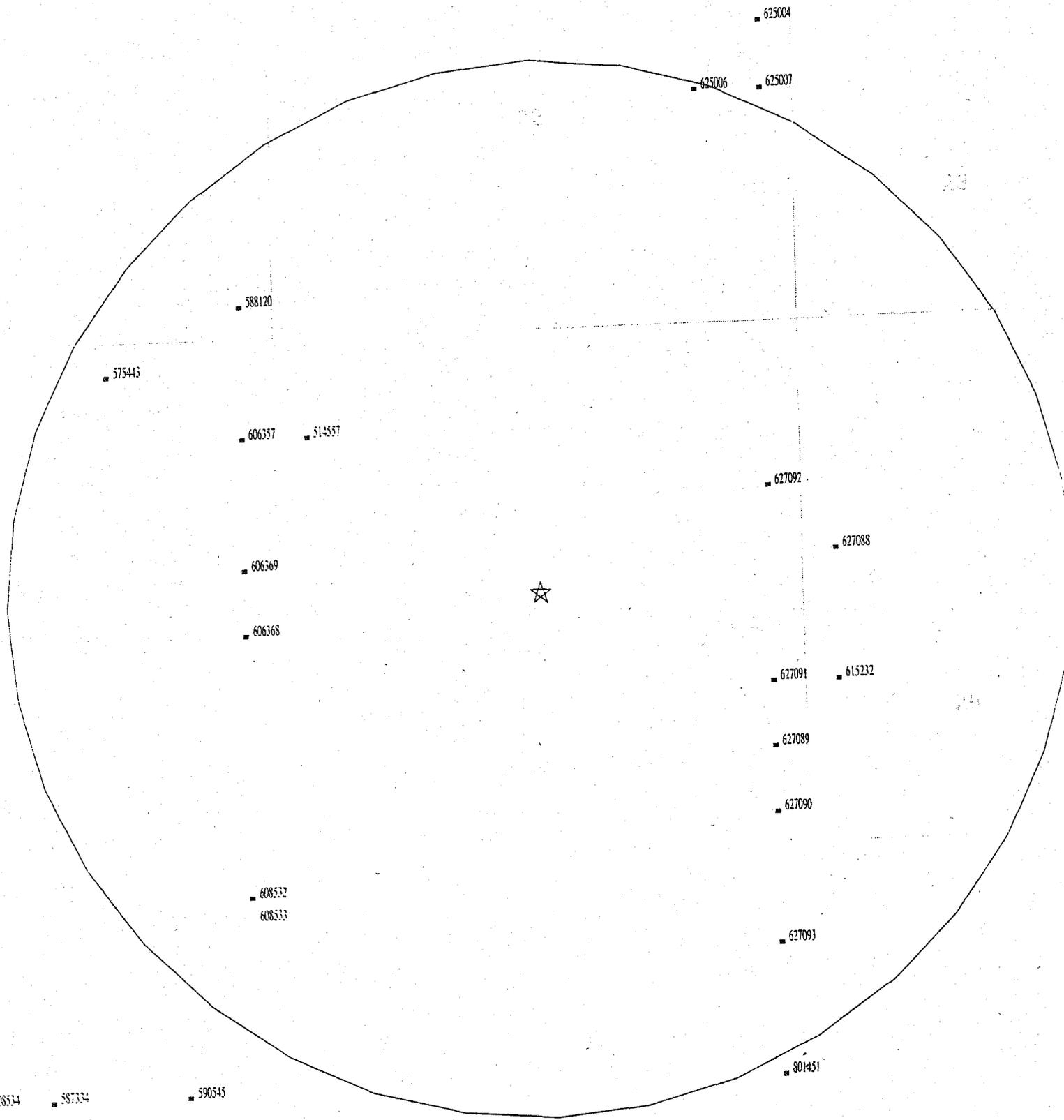
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ARIZONA  
DEPARTMENT  
OF WATER  
RESOURCES

WellFinder

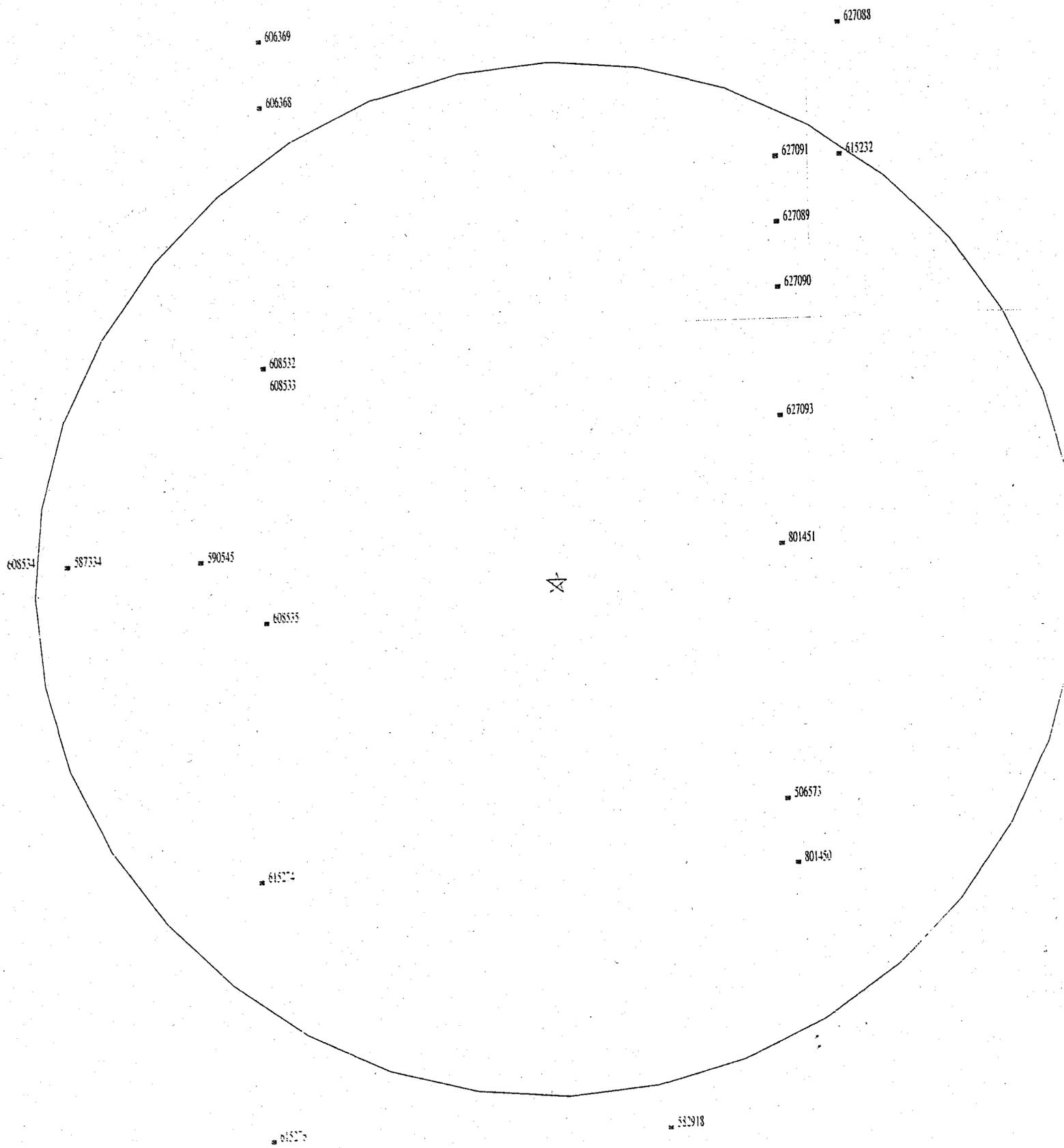


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12/03/02



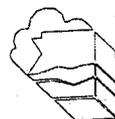
WellFinder



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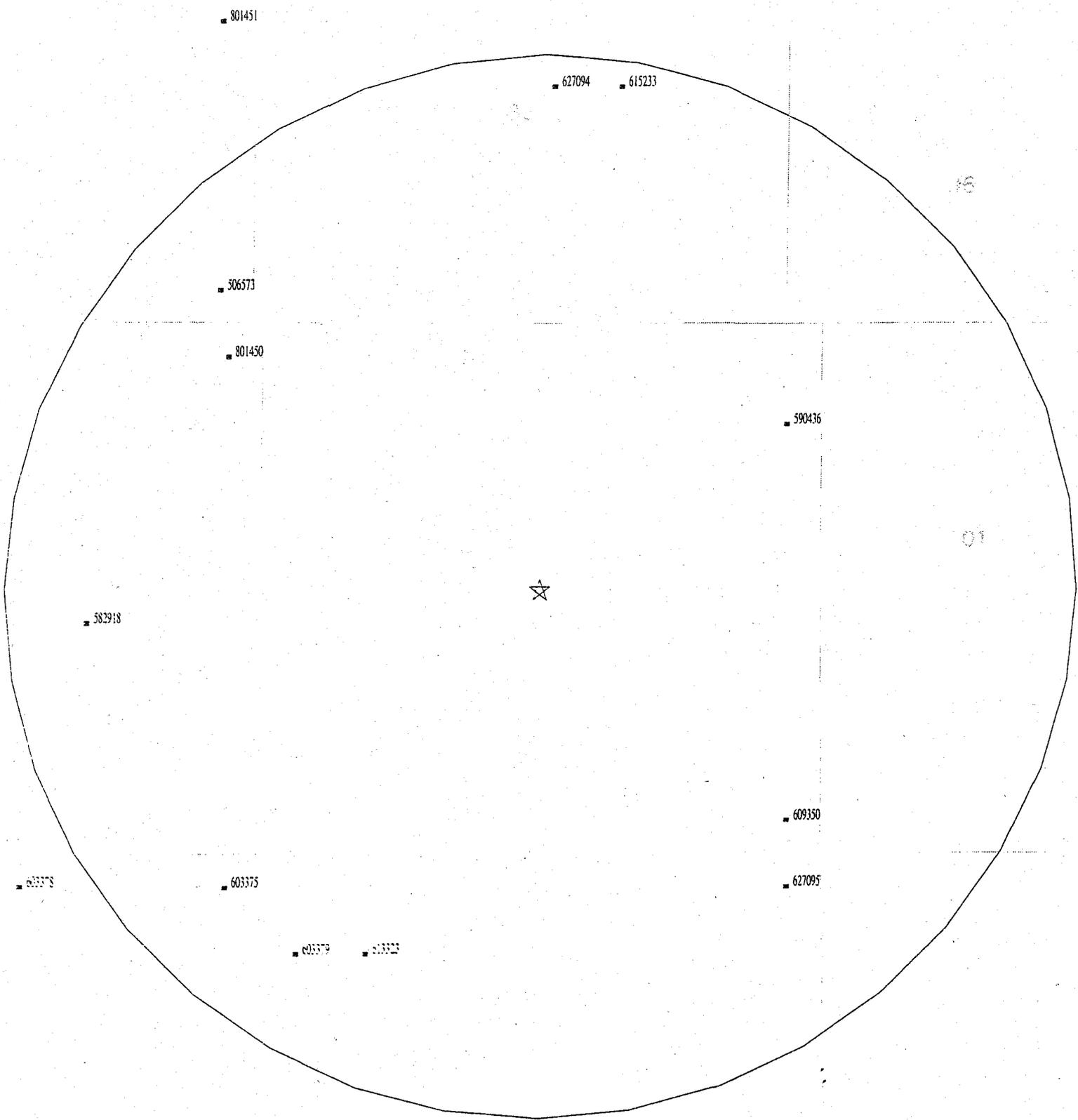
12/03/02

Coals County



ARIZONA  
 DEPARTMENT  
 OF WATER  
 RESOURCES

WellFinder



Registered Wells within 5280 Feet of  
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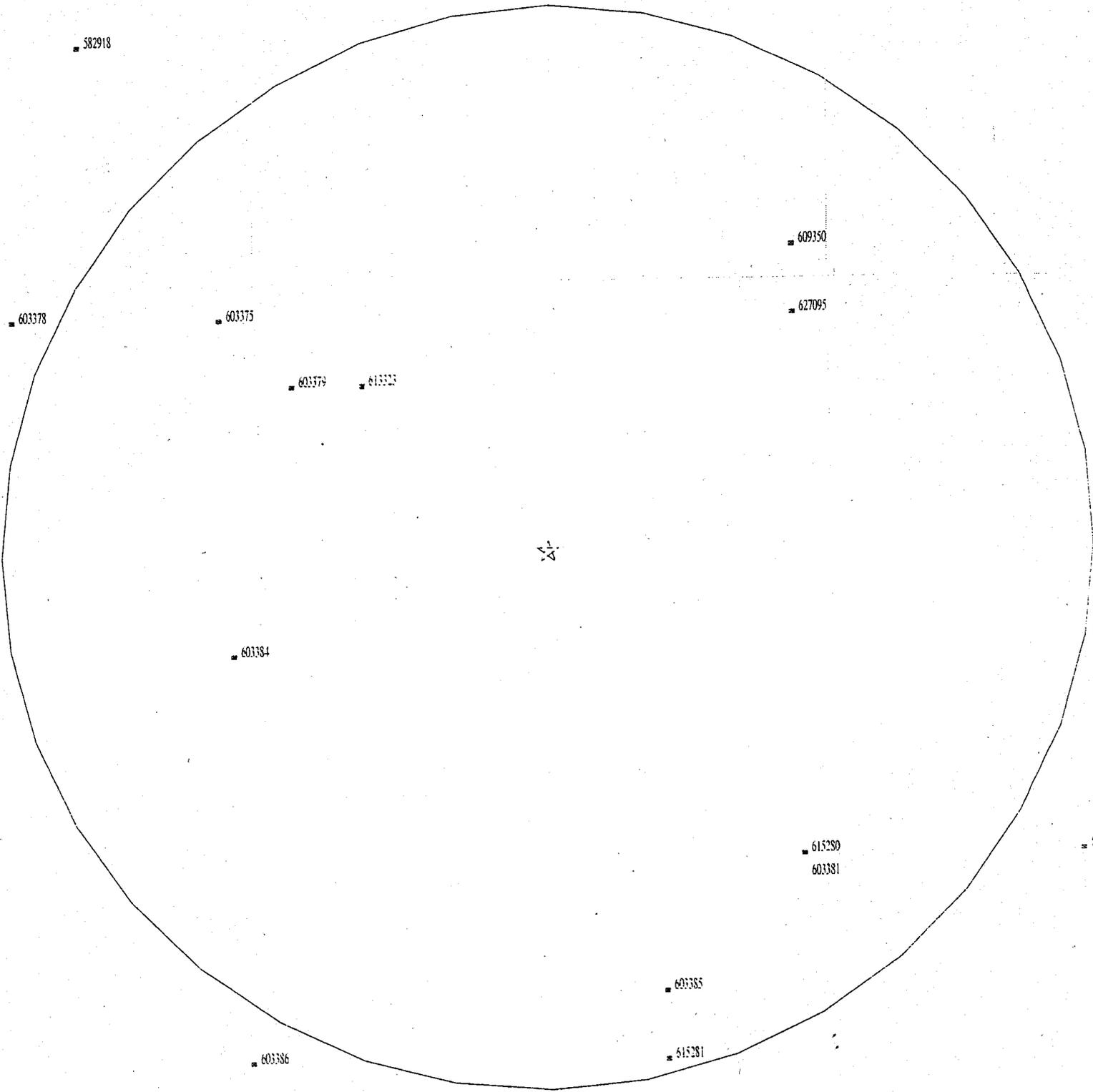
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ARIZONA  
DEPARTMENT  
OF WATER  
RESOURCES

WellFinder



Registered Wells within 5280 Feet of  
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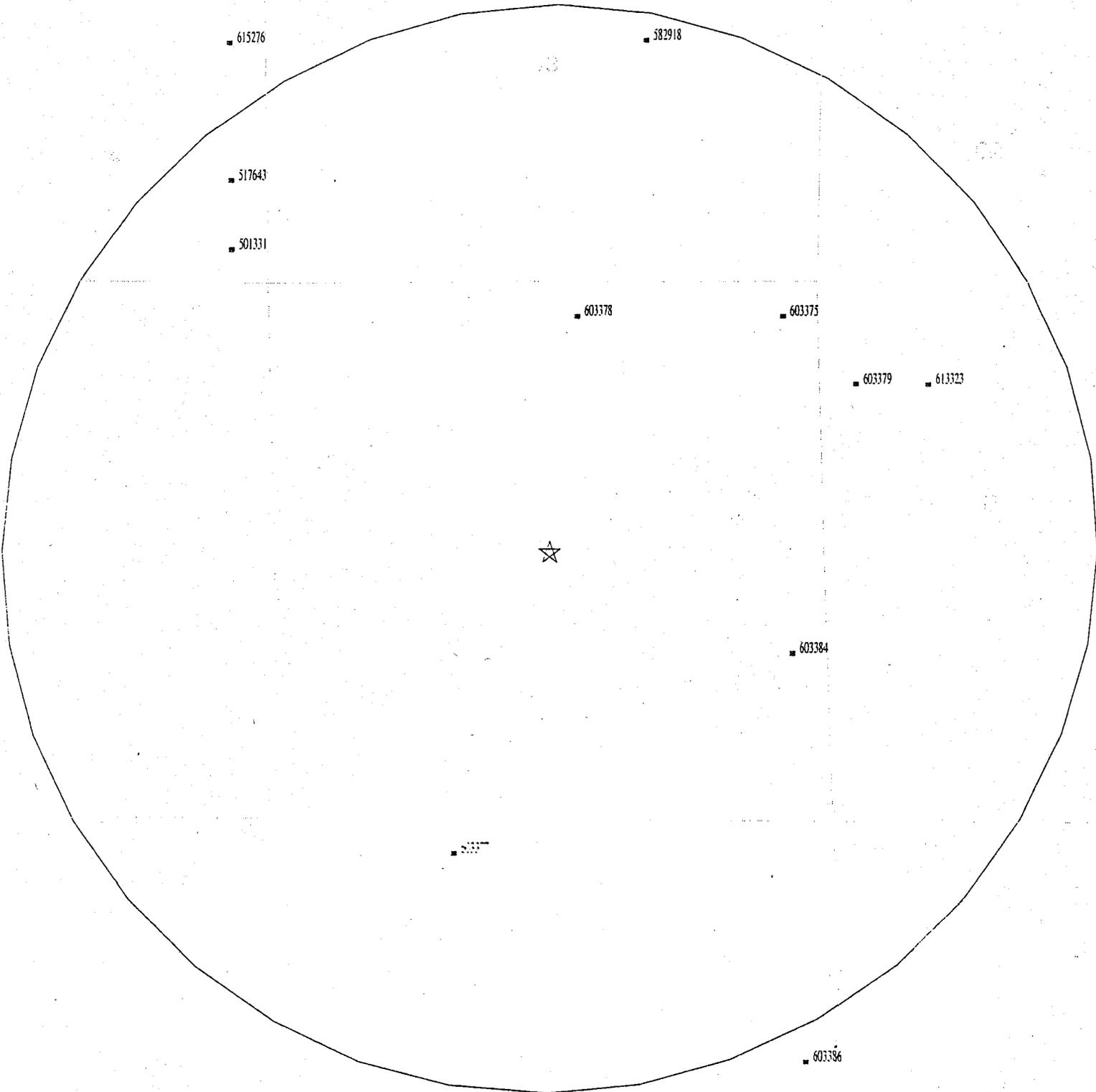
12/03/02

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ARIZONA  
DEPARTMENT  
OF WATER  
RESOURCES

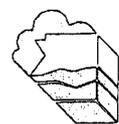
WellFinder



Registered Wells within 5280 Feet of  
Cadastral Location D03008010000

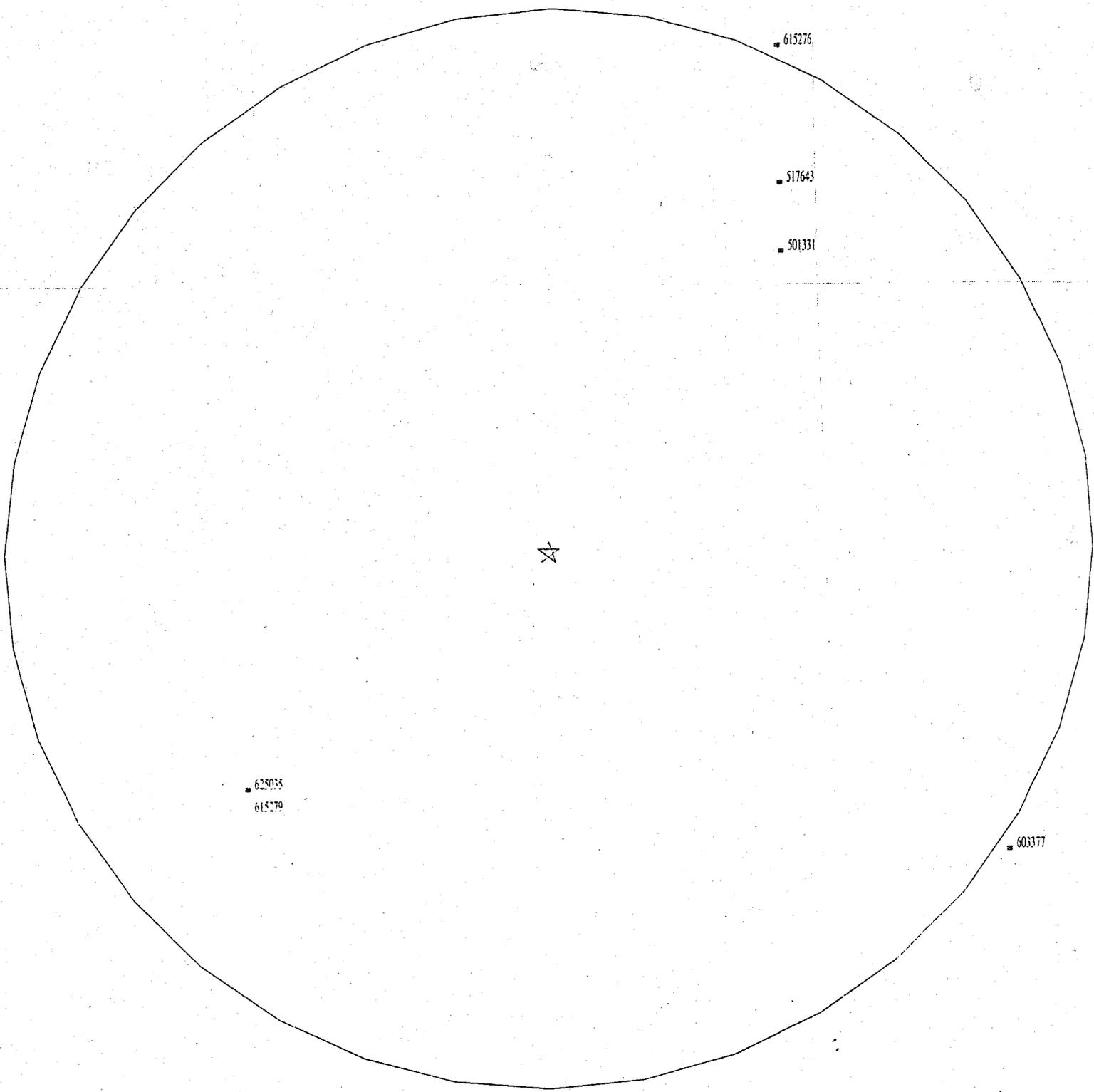
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ARIZONA  
DEPARTMENT  
OF WATER  
RESOURCES

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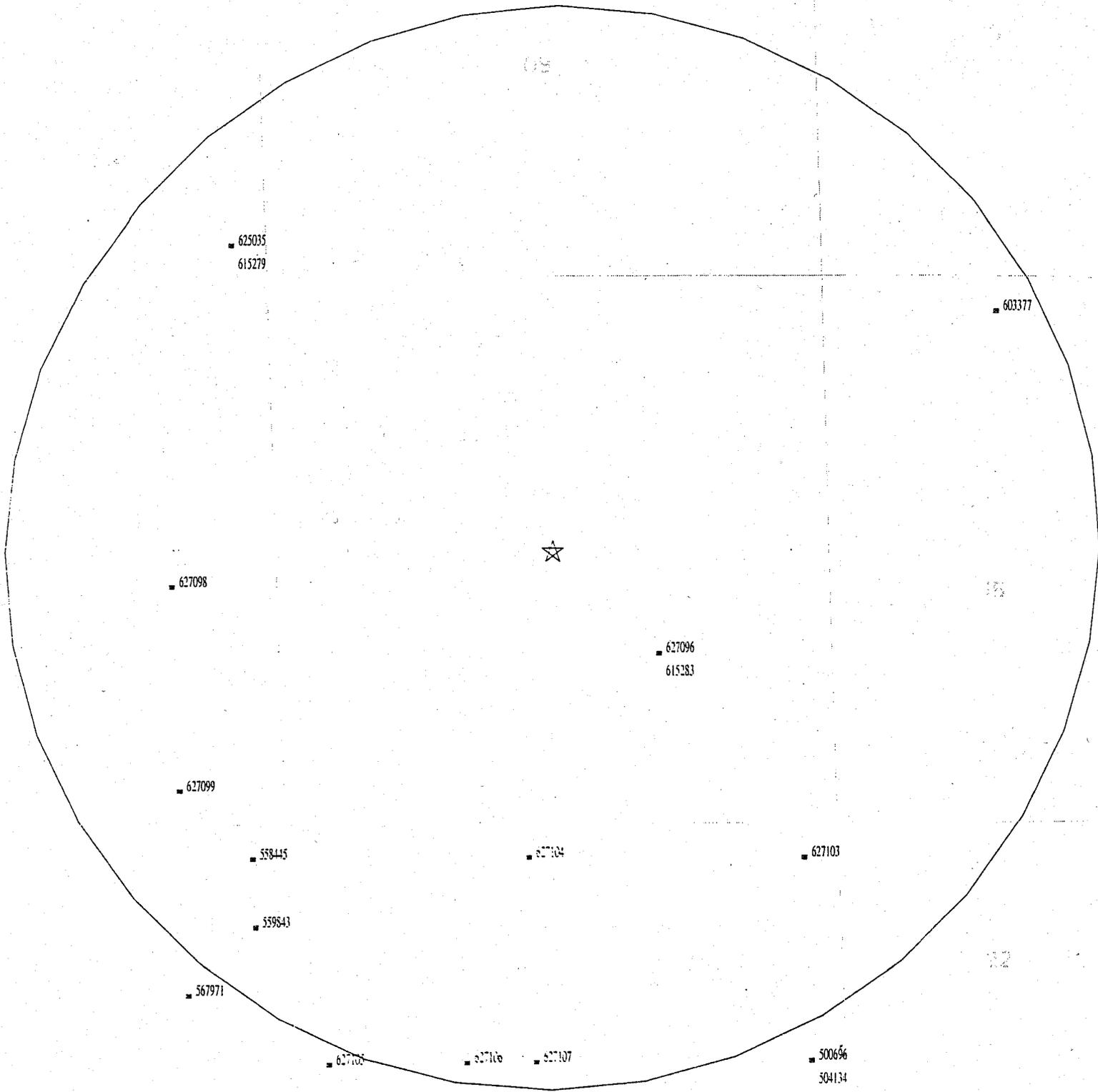
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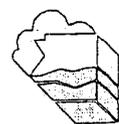
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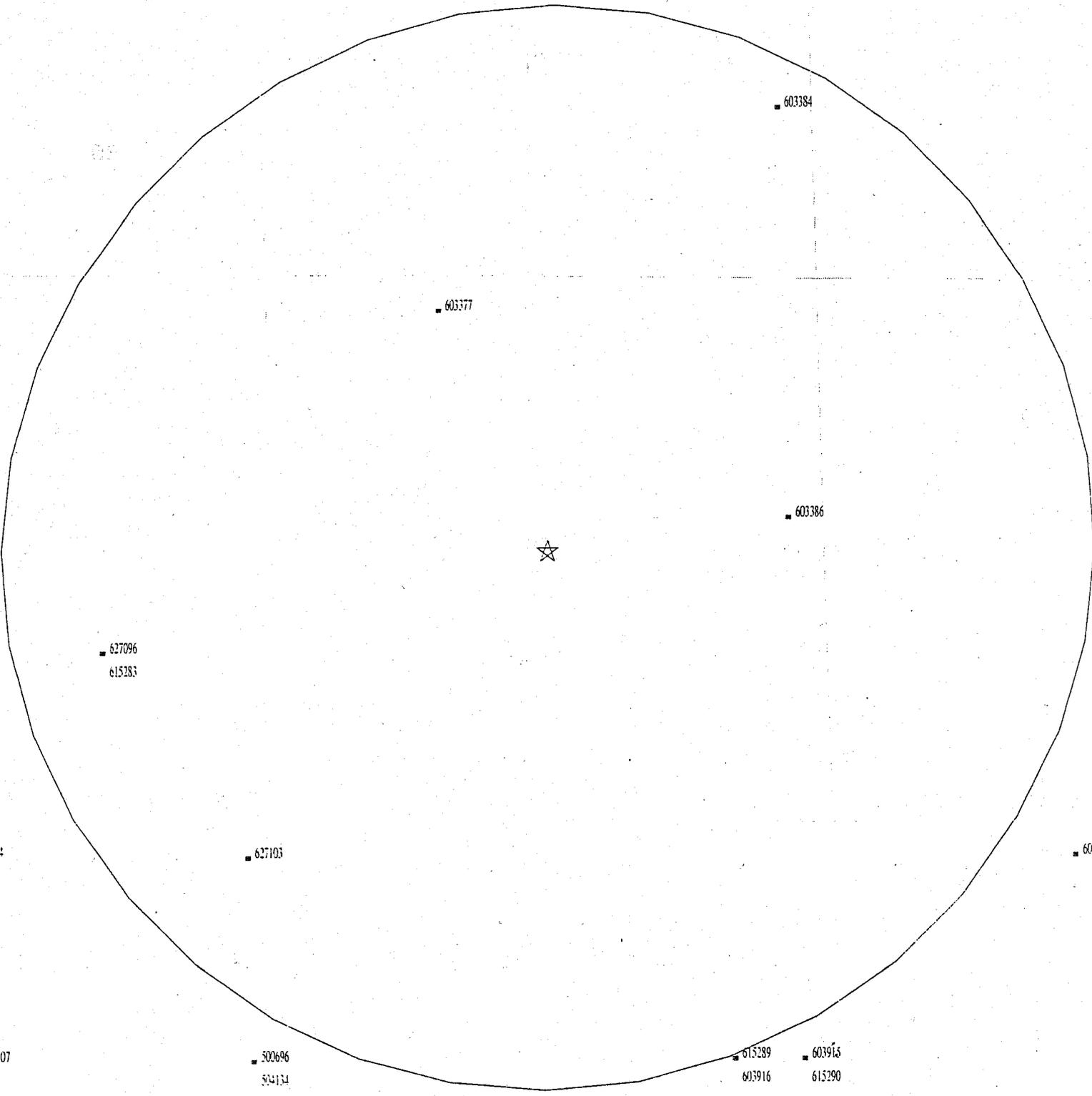
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DEPARTMENT  
OF WATER  
RESOURCES

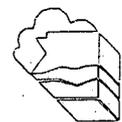
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Registered Wells within 5280 Feet of  
Cadastral Location D03008015000

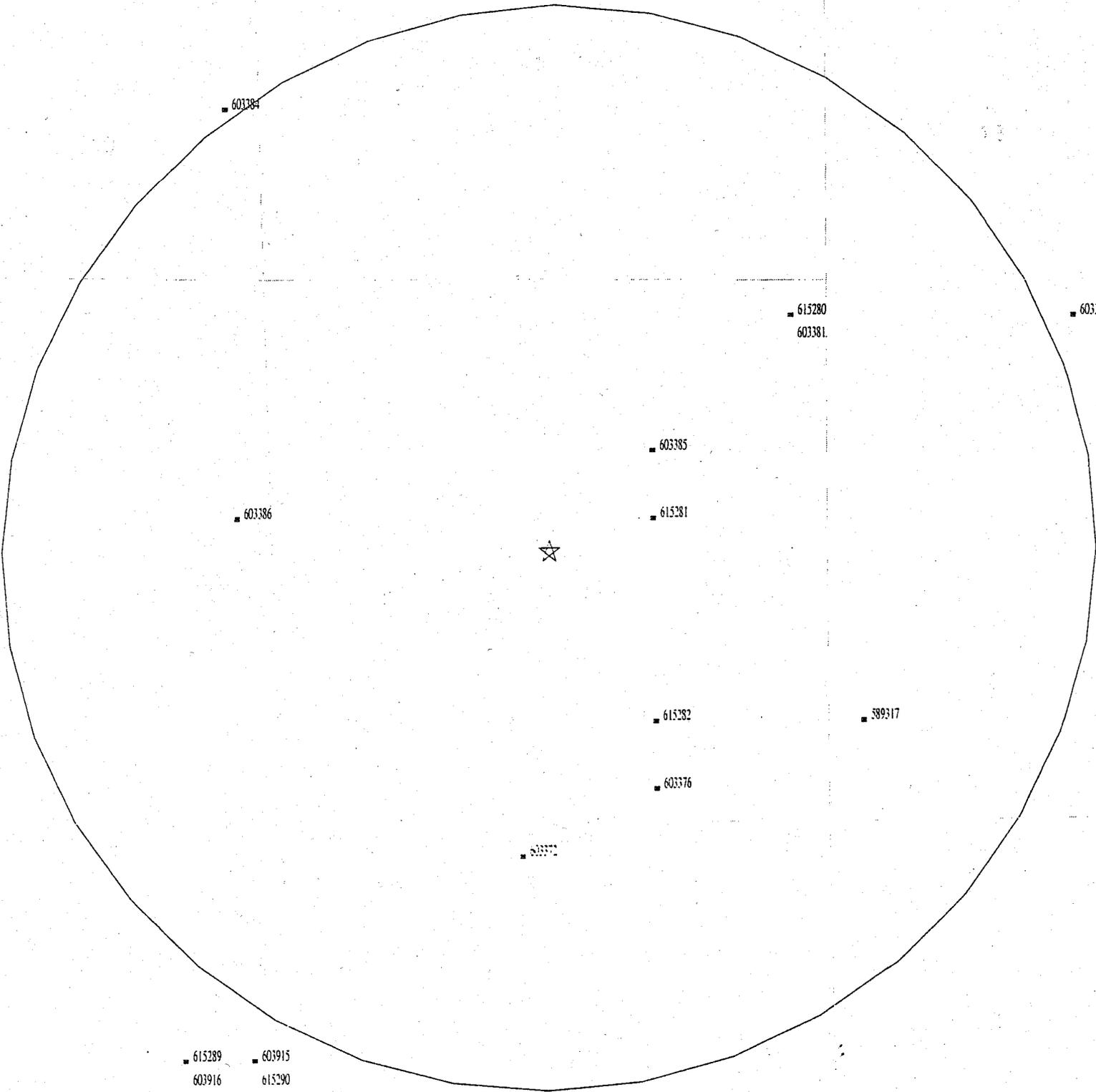
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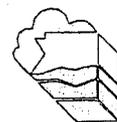
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Cadastral Location D03008014000

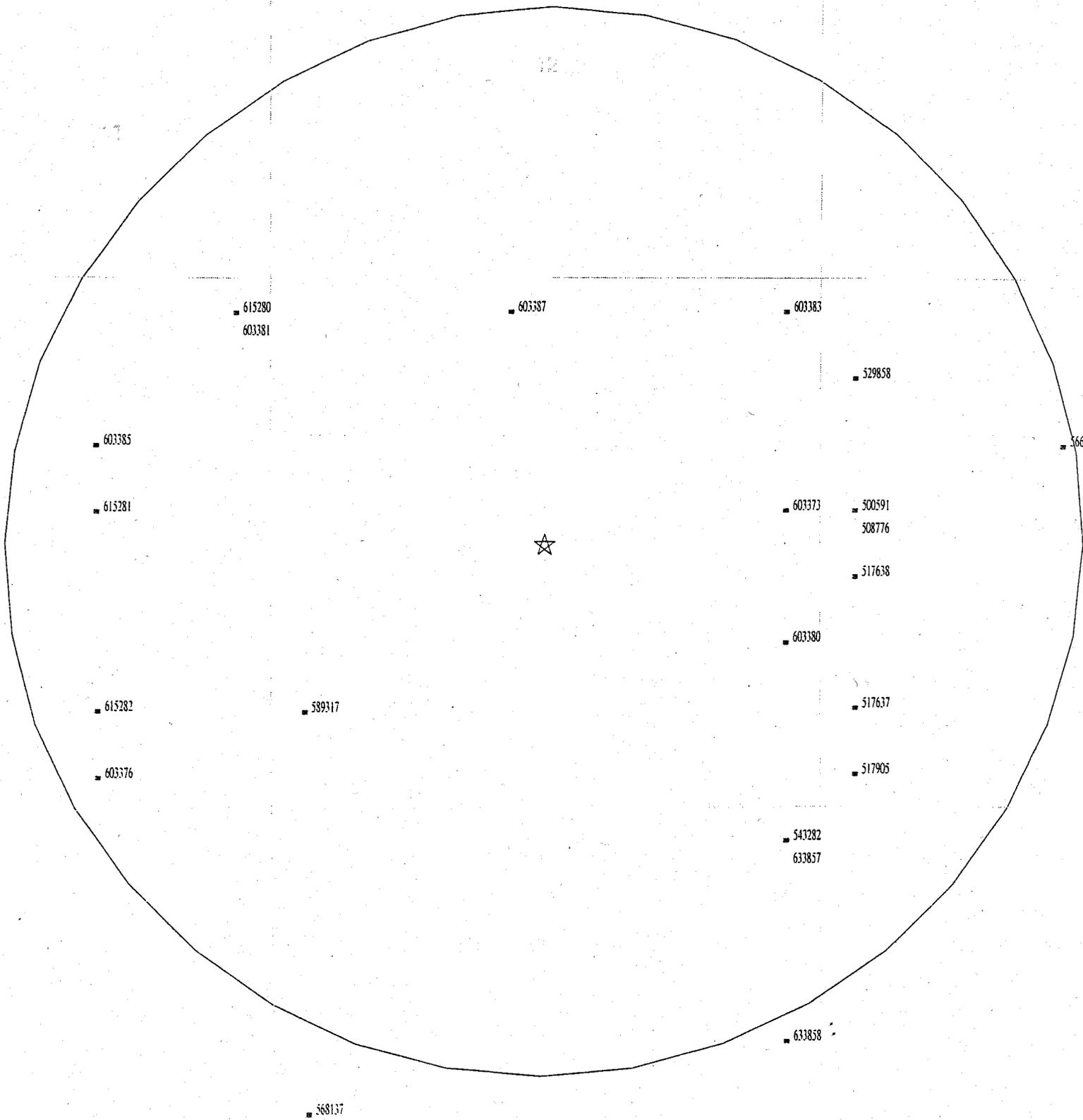
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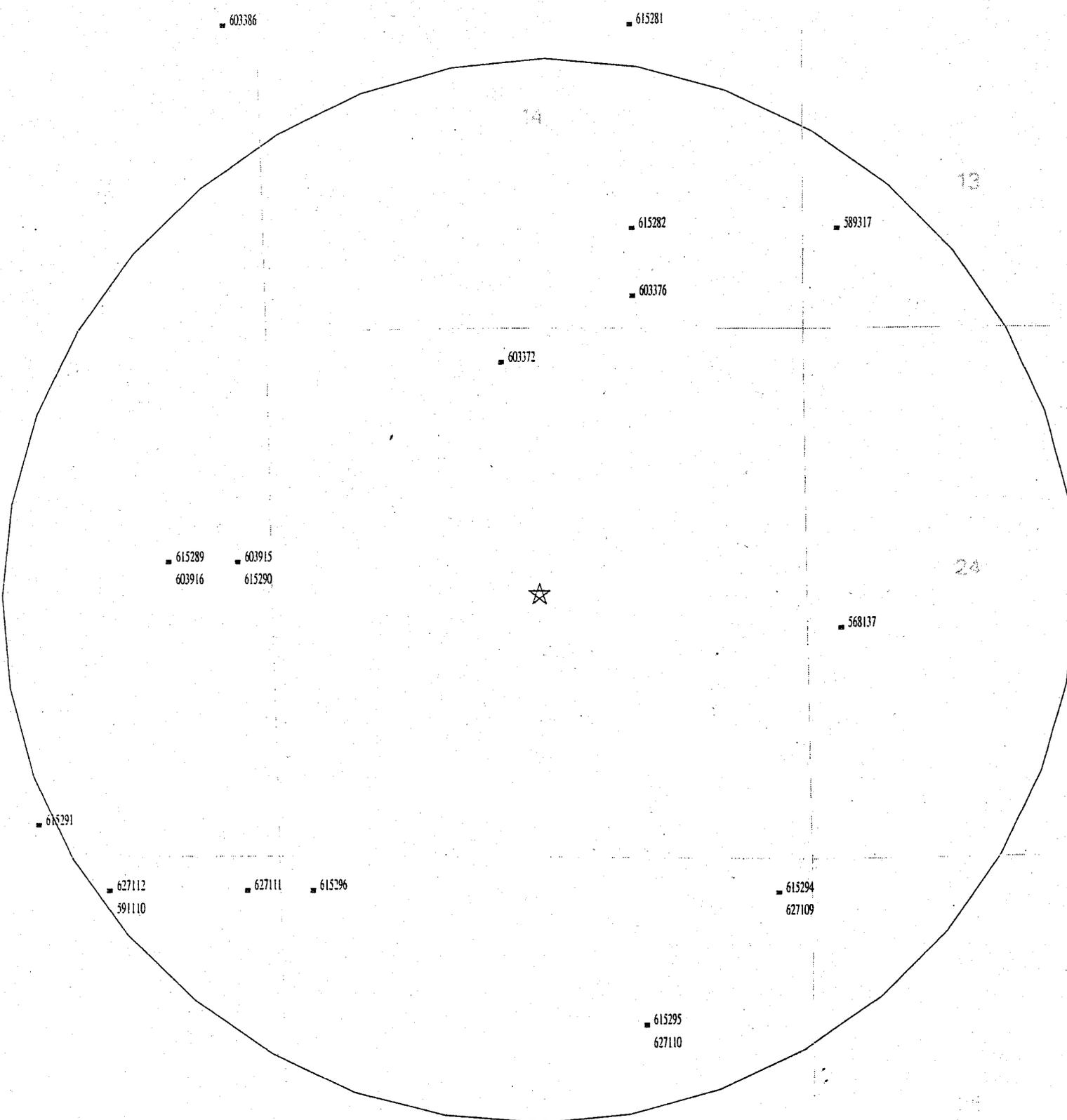
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WellFinder



Registered Wells within 5280 Feet of  
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12/03/02

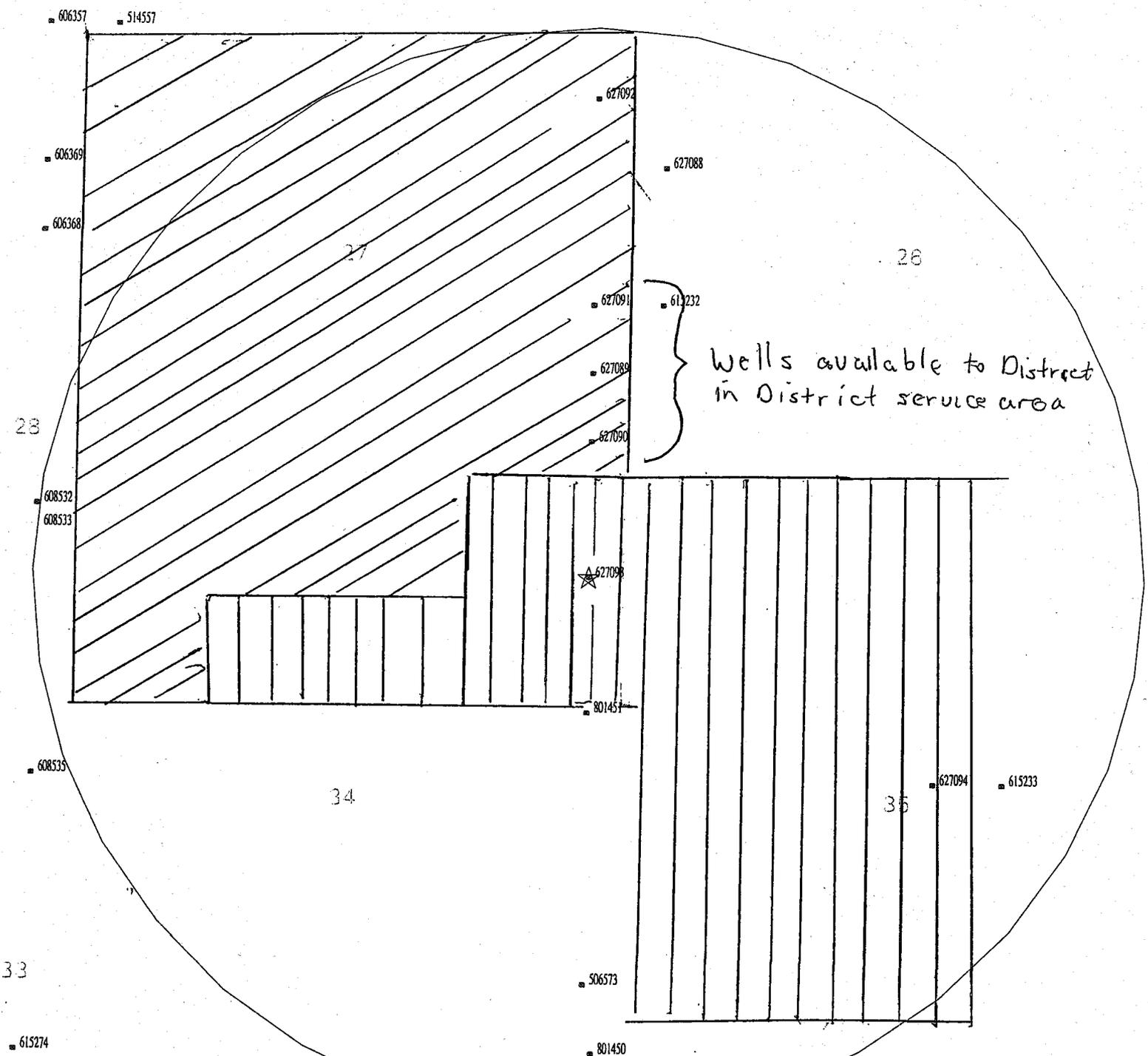
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ARIZONA  
DEPARTMENT  
OF WATER  
RESOURCES

WellFinder

# **EXHIBIT G**



Wells available to District  
in District service area

-  - Diversified Water Utilities service area overlapped by District
-  - well being condemned by Diversified
-  - exclusive area serviced by Diversified Water Utilities, Inc

Registered Wells within 5280 Feet of  
Well ID 627093

05/14/02

Scale 1:auto



WellFinder

# **EXHIBIT H**

NOV 25 2002

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BELL LAW OFFICE  
2 365 East Coronado, Suite 200  
Phoenix, Arizona 85004  
3 Telephone: (602) 252-1142  
Facsimile: (602) 604-0004  
4 Attorney for Plaintiff

5  
6 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF PINAL**

8 **DIVERSIFIED WATER UTILITIES, INC., an**  
Arizona corporation,

9 Plaintiff,

10 vs.

No. CV 2002-00245

11 **RUSSELL E. BRANDT and JANET A.**  
12 **BRANDT, husband and wife; REBECCA**  
13 **HOPE BRANDT, a single woman; MARK A.**  
14 **SZCZEPANIEC and PAMELA J.**  
15 **SZCZEPANIEC, husband and wife; MICHAEL**  
16 **WILLIAM RICH and MELINDA BETH**  
17 **RICH, husband and wife; SAN TAN**  
18 **MOUNTAINS LIMITED PARTNERSHIP, an**  
19 **Arizona limited partnership; NEW MAGMA**  
20 **IRRIGATION AND DRAINAGE DISTRICT,**  
a municipal corporation and political  
subdivision of the State of Arizona; **ROBERT**  
21 **L. LAYTON, individually and d/b/a FALFA**  
22 **FARMS 95; PINTO CREEK CO., L.L.C., an**  
23 **Arizona limited liability company; JOHN**  
24 **DOES I-X, JANE DOES I-X, and BLACK and**  
25 **WHITE CORPORATIONS I-X,**

26 Defendants.

27 **PLAINTIFF'S RESPONSE**  
28 **TO DEFENDANTS'**  
**OPENING BRIEF RE: THE**  
**LAW OF THE CASE**

(Assigned to the Honorable  
William J. O'Neil)

**PREFACE**

To the surprise of Diversified, Defendants have changed their position in this case with their announcement in Defendants' Opening Brief Re: The Law of The Case that the Subject Property had been sold to Johnson Utilities, L.L.C. ("JUL") and that by the time of the continued hearing in this case on December 13, 2002 the Subject Property will belong to Skyline Domestic Water Improvement District ("SDWID"). Regardless of that change of position, the issue in this case remains to be whether Diversified should be permitted to

1 acquire the Subject Property located in Diversified's exclusive certificated franchised service  
2 area to fulfill immediate important needs for the 240 homes and 600 to 700 residents  
3 Diversified serves. SDWID is not entitled to own the Subject Property because, among other  
4 reasons discussed in this memorandum, (1) there is no statutory authority which would  
5 permit it to acquire the Subject Property, (2) SDWID's only potential use for the Subject  
6 Property is at some indefinite future time (3) SDWID has multiple alternative wells more  
7 readily available to it if the need for a well ever arises and (4) its existence is the subject of  
8 a Superior Court Challenge as being arbitrary, illegal and void<sup>1</sup>.

9 Diversified's immediate need for an additional well is documented by the Arizona  
10 Corporation Commission and the operating history of Diversified. SDWID does not need  
11 this well. Under any theory, Diversified is entitled to proceed with this condemnation action  
12 to acquire the Subject Property even if title has been transferred to SDWID.

13 This memorandum is submitted on the yet unproven assumption that (1) title to the  
14 Subject Property is currently held in SDWID's name and (2) that SDWID is a duly formed  
15 governmental entity. JUL is merely a private party improperly intruding into these  
16 proceedings and any assertions by JUL as a private party should be summarily dismissed for  
17 the reasons set forth in Diversified's opening brief. Plaintiff has received no proof that in  
18 fact either JUL or SDWID has acquired title to the Subject Property.

#### 19 MEMORANDUM OF POINTS AND AUTHORITIES

#### 20 I. By Virtue of This Condemnation Lawsuit Neither JUL Nor SDWID Can Have 21 Interest in Subject Property.

22 In accordance with the provisions of A.R.S. § 12-1191, on March 28, 2002 Plaintiff  
23 caused a notice of *Lis Pendens* to be recorded in the office of the County Recorder of Pinal  
24 County. (Copy of *Lis Pendens* attached hereto as Exhibit 2.) That notice gave constructive

---

25  
26 <sup>1</sup>The case is presently being heard in Superior Court in Maricopa County as  
27 *Diversified Water Utilities, Inc. v. Pinal County, SDWID Domestic Water Improvement*  
28 *District, et al.*, No. CV2002-003724. Diversified's position in that case is set out in its  
Disclosure Statement generated in that case, a copy of which is attached hereto as Exhibit  
1.

1 notice to the entire world that this action would result in the transfer of title of the Subject  
2 Property to Plaintiff and any person, including JUL, acquiring title to the Subject Property  
3 takes subject to this action. *Mammoth Cave Production Credit Ass'n v. Gross*, 141 Ariz. 389,  
4 687 P 2d 397 (App., 1984). Moreover, A.R.S. § 12-1145.C provides that the Notice of  
5 Hearing which was recorded in the office of the Pinal County Recorder on April 25, 2002  
6 in this action "shall be constructive notice of the proceedings to all persons who subsequently  
7 acquired an interest in or lien upon the property, and plaintiff shall take all property  
8 condemned under this article free of the claims of such persons." (Copy of Notice of  
9 Hearing attached hereto as Exhibit 3.) As a result of the provisions of A.R.S. §§ 12-1191  
10 and 12-1145.C as to Plaintiff neither JUL nor SDWID has any interest in the Subject  
11 Property and no right to participate in this litigation.

12 **II. SDWID Has No Statutory Authority To Go Beyond Boundaries.**

13 Unlike towns and cities which have the right to acquire property outside of the  
14 incorporated area pursuant to A.R.S. § 9-401.A, no similar legislation exists which would  
15 permit a county improvement district to acquire property outside of its boundaries. Any  
16 attempt by SDWID to acquire the Subject Property which is outside SDWID' boundaries  
17 would be illegal and void.

18 **III. Response to Defendants Opening Brief.**

19 This response follows the same order set out by Defendants in their Opening Brief.

20 **A. Diversified Has The Right to Condemn Subject Property Under A.R.S. §**  
21 **12-1114.**

22 Defendants claim that under A.R.S. § 12-1114 Plaintiff cannot condemn the Subject  
23 Property because it will belong to SDWID and since SDWID is a governmental body the  
24 Subject Property will no longer be private property. Contrary to Defendants' claim, even  
25 property owned by a government is, for the purpose of eminent domain, defined by statute  
26 as "private property." A.R.S. § 12-1114 is based on a California statute which was adopted  
27 when Arizona became a state in 1913. The California statute at that time, C.C.P. § 1240, and  
28 A.R.S. § 12-1114 are substantially the same. Each defines "private property" as including  
lands belonging to any city "not appropriated to some public use" and each includes

1 “[p]roperty appropriated to public use.” While those two sub-sections may seem to be in  
2 conflict, the conflict was resolved in *Marin County Water Co. v. Marin County*, 145 Cal.  
3 586, 79 P. 282 (1904). In that case the California Supreme Court, interpreting the foregoing  
4 statutory language, concluded that a private water company had the right to condemn  
5 property held by a government entity which was being used for a public purpose. See also  
6 *Reclamation District No. 551 v. Superior Court*, 151 Cal. 263, 90P. 545 (1907). The  
7 California decisions, which predate Arizona’s adoption of the California statutes, are the law  
8 of Arizona because A.R.S. § 12-1114 is presumed to have been adopted with the  
9 construction previously placed on it by the courts of the state of California. *England v. Ally*  
10 *Ong Hing*, 105 Ariz. 65, 459 P 2d 498 (1969).

11 **B. Diversified’s Proposed Use is More Necessary Use than SDWID.**

12 This action was filed pursuant to the Public Works Eminent Domain Law and not  
13 under the general condemnation laws, A.R.S. § 12-1111. *et seq.* because the provisions of the  
14 Public Works Eminent Domain Law most clearly apply to the fact situation involved in this  
15 condemnation action. Because Diversified has complied with the provisions of the specific  
16 statute, the Public Works Eminent Domain Law, it is not necessary for Diversified to comply  
17 with the provisions of the general condemnation laws, including the provisions of A.R.S. §  
18 12-1112. *Desert Waters, Inc. v. Superior Court*, 91 Ariz. 163, 370 P2d 652 (1962).

19 However, even if this action was not properly brought under the Public Works  
20 Eminent Domain Law and SDWID is entitled to benefit by the provisions of A.R.S. § 12-  
21 1112, Diversified’s proposed use of the Subject Property meet the requirements of A.R.S.  
22 § 12-1112 because Diversified’s proposed use is clearly “a more necessary public use” than  
23 that proposed by SDWID. Note the following facts:

- 24 1. The Subject Property is not presently being used for any use, public or private.
- 25 2. SDWID has no legal right to acquire the Subject Property because it is located  
26 outside of its boundaries.
- 27 3. Diversified will be able to put the property to a public use immediately upon  
28 acquisition.
4. Diversified’s customers have an immediate need for the well production  
facilities to be located on the Subject Property.

- 1 5. The Subject Property will be a primary water supply source for the Diversified system.
- 2 6. There is no immediate need for the provision of domestic water within the
- 3 boundaries of SDWID and Diversified can serve any such immediate need
- 4 today.
- 5 7. SDWID does not plan full time public use for Subject Property.
- 6 8. SDWID is not presently in a position to put the Subject Property to any public
- 7 use, SDWID may never be able to put the Subject Property to a public use, and
- 8 at best it will be a long time before SDWID could ever put the Subject
- 9 Property to Public Use.
- 10 9. The Subject Property is located within Diversified's exclusive franchised area
- 11 and outside of SDWID's boundaries meaning that SDWID can not use the
- 12 Subject Property as effectively as can Diversified.
- 13 10. SDWID's proposed use of the Subject Property for a well would interfere with
- 14 the operation of Diversified's domestic water system because SDWID's water
- 15 lines would necessarily cross over Diversified's water lines making it more
- 16 expensive for Diversified to maintain its system and increasing the risk to its
- 17 customers of service interruptions.
- 18 11. SDWID has multiple alternative wells within its current boundaries that are
- 19 unused and readily available to SDWID.

20 (a) **No homes within SDWID boundaries.** There presently are no homes within  
21 SDWID's boundaries; the only present use of property within SDWID's boundaries is for  
22 farming which would not rely on SDWID for water. However, if there were presently  
23 potential customers within that portion of SDWID which overlaps Diversified's franchised  
24 area, prior to establishing service for those prospective customers<sup>2</sup> SDWID must file a  
25 condemnation action and pay just compensation to Diversified<sup>3</sup>. A.R.S. §§ 48-909(D), 9-  
26 515, 9-516.A and B.

27 (b) **Location of Subject Property inappropriate for SDWID and ideal for**  
28 **Diversified.** The Subject Property is outside of SDWID's boundaries and a substantial

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25 <sup>2</sup>If there were potential customers within the overlap area, Diversified is presently the  
26 only provider of domestic water service prepared, authorized and required by law to provide  
27 domestic water to those customers.

28 <sup>3</sup>Unlike a town or city which has the benefit of A.R.S. § 9-401.A, SDWID would not  
have the right to acquire any portion of Diversified's franchise outside of SDWID's  
boundaries.

1 distance from the majority of SDWID's service area making SDWID's potential water  
2 service operation less efficient thus more expensive. With the multiple alternative wells  
3 available within SDWID's boundaries it will be able to readily and efficiently serve the  
4 purposes of SDWID with those wells if its existence is ever ratified and it starts serving  
5 customers. On the other hand, the Subject Property, because it is situated within  
6 Diversified's franchise area, is ideally situated to serve the customers of Diversified in the  
7 most economic manner possible.

8 **(c) Santa Cruz case does not support Defendants' position.** Defendants incorrectly  
9 rely on *Santa Cruz Irrigation District v. City of Tucson*, 108 Ariz. 152, 494 P2d 24 (1972)  
10 for support of its position. Unlike the Santa Cruz Irrigation District, whose primary purpose  
11 was to provide irrigation water to its customers, Diversified's primary and only purpose is  
12 to provide domestic water to its customers<sup>4</sup>. The Court determined that the City of Tucson  
13 had a more necessary use for Santa Cruz's domestic water system since the provision of  
14 domestic water was its primary purpose. Likewise, in *City of Mesa v. Salt River Project Agr.*  
15 *Impr & P. Dist*, 92 Ariz. 91, 373 P2d 722 (1962) the Court acknowledged that SRP's primary  
16 purpose was not the provision of electrical service.

17 **(d) SDWID plans only part time public use of Subject Property.** Interestingly,  
18 Defendants claim that water pumped from the well on the Subject Property "will be available  
19 for other users on as (sic) as-needed basis subject to normal commercial negotiations<sup>5</sup>."  
20 Because Diversified intends to operate the well solely for public purposes and Defendants  
21 indicated that SDWID does not intend to operate the well for exclusively public purposes,  
22 Diversified's position that its need for the Subject Property for public use is even greater.

23 **(e) Diversified needs the Subject Property to meet statutory obligations to provide**  
24 **quality service to customers.** The issue is not whether SDWID has the right to condemn

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25  
26 <sup>4</sup>Defendants have admitted that Skyline does not plan to use the well exclusively for  
27 public purposes, but that water from the well would be "available to other users on as [sic]  
28 as-needed basis subject to normal commercial negotiations." Defendants' Opening Brief  
Re: the Law of the Case page 4, line 1.

<sup>5</sup>Defendants' Opening Brief Re: the Law of the Case page 4, line 1.

1 any portion of Diversified's franchise area. The issue is Diversified's obligation under  
2 Arizona law to provide quality water service to its customers. Diversified must acquire  
3 additional water production facilities to meet current demands and statutory requirements.  
4 If Diversified fails to meet current demands and statutory requirements for the provision of  
5 domestic water to its customers, then Diversified is clearly subject to sanctions from one or  
6 more state agencies.

7 **(f) Diversified will use the well full time.** Defendants have mischaracterized  
8 Diversified's use of the term "back up" when describing the purpose for the acquisition of  
9 the Subject Property. In the event one of the sources goes down, whether due to pump  
10 failure or otherwise, the remaining source does in fact become a backup. The purpose of the  
11 acquisition of the Subject Property was more fully stated in the resolution of the Board of  
12 Directors of Diversified authorizing this condemnation action, a copy attached and  
13 "incorporated" in the Complaint of this action as Exhibit B, which stated in its recitals:

14 Whereas the corporation has deemed it necessary and essential as a matter of  
15 public welfare that it initiate a public works project for the acquisition and  
16 development of an additional water well and the necessary well property for  
17 water production purposes.

18 The intent is to improve the existing well at the Subject Property, install a new pump,  
19 water treatment facility and a reservoir. Once installed, this facility will operate full time  
20 along with Diversified's current well. The new facility will not only provide assured water  
21 supply to the homes within Diversified's franchise area, but also further its fire protection  
22 capability as a result of two water sources concurrently pumping into the system. In actual  
23 fact, the new well will become the primary production source for Diversified's system as the  
24 new pump for the well on the Subject Property, which has already been acquired, is rated at  
25 60 horsepower whereas the present pump is only 30 horsepower.

26 **(g) Unless Diversified's decision to condemn Subject Property arbitrary,**  
27 **capricious or fraudulent, decision of its Board must stand.** Plaintiff does not agree with  
28 Defendants' interpretation of *Tucson Community and Design Center, Inc. v. City of Tucson*,  
131 Ariz. 454, 459, 460, 641 P2d 1298 (App. 1981) that "substantial evidence" is required  
to demonstrate whether Diversified's taking is necessary. In *Tucson Community* the Court

1 merely noted that in a California case the trial court had engaged in “substantial evidence”  
2 review because the initial determination of blight had been made by an administrative agency  
3 rather than by a legislative body.” It was not a holding; in fact, it was not even dicta. It was  
4 merely a comment. Diversified submits that under the holding in *Tucson Community*  
5 Diversified’s Board of Directors sits as does a legislative body and that absent proof from  
6 Defendants that the determination of necessity by Diversified’s Board of Directors was  
7 arbitrary, capricious, or fraudulent, the determination by Diversified’s Board must stand.  
8 Notwithstanding that, Diversified is prepared at the continued hearing to present substantial  
9 evidence to support its determination that the taking is necessary is supported by the  
10 substantial evidence.

11 (h) **Diversified’s planned use of Subject Property immediate.** *City of Phoenix v.*  
12 *McCullough*, 24 Ariz. App. 109 (1975), which was cited by Defendants in support of their  
13 defense, actually supports Plaintiff’s case. In *McCullough* the attempted taking was defeated  
14 because the City’s plans for the property were so remote in time. Diversified plans to start  
15 using improving the Subject Property immediately upon acquisition and not only already has  
16 approved WIFA financing and a new pump ready for use, but has a water system  
17 infrastructure of pipelines, water meters, customers, etc. in place. To the contrary, SDWID  
18 has nothing. If SDWID had been the condemnor against Diversified, then *McCullough*  
19 would have been a good case for Diversified to raise in opposition to a proposed taking by  
20 SDWID because SDWID is not presently able to deliver domestic water service within  
21 SDWID’s boundaries.

22 **C. Diversified has Superior Right To Ownership of Subject Property.**

23 Defendants’ reference to A.R.S. § 48-909 and § 9-515 is inappropriate. The fact is  
24 that Diversified, and not SDWID, is the condemnor in this case. The only issue is whether  
25 Diversified is entitled to condemn the Subject Property. Even if SDWID is the owner of the  
26 Subject Property, Diversified still has the right to condemn because of the specific provisions  
27 of the Arizona Public Works Condemnation Law and, if applicable, a more necessary use for  
28 the Subject Property as provided under ARS § 12-1112. *Marin County Water Co. v. Marin*

1 County, supra.

2 **D. Diversified Is Engaged in a Public Works Project .**

3 Diversified is clearly engaged in a Public Works Project as was throughly explained  
4 in Diversified's Opening Pre-Hearing Memorandum. Diversified agrees, however, that this  
5 action could have been brought under the provisions of A.R.S. § 12-1141, et seq. and, if  
6 required, that Diversified has met any requirement that the taking be for a more necessary  
7 use than that for which the Subject Property is presently be used.

8 **E. Diversified's Lack of Right to Immediate Possession Immaterial.**

9 Defendants' claim that because Diversified as a private corporation does not have the  
10 right to take possession of the property pending condemnation somehow precludes its right  
11 to proceed with this proceeding. Whether Diversified has such a right is immaterial. The  
12 only purpose of having possession during dependency of the litigation is to allow the planned  
13 project to progress at a little more rapid rate. As cited by Defendants, the Court in *Hughes*  
14 *Tool Co. v. Superior Court of County of Pima*, 91 Ariz. 154, 370 P2d 646 (1962) held that  
15 a private condemnor, unlike a governmental body, pursuant to the Arizona Constitution, does  
16 not have the right to take possession of property pending litigation by posting the estimated  
17 damages of the case with the court. That case did not in any other way preclude a private  
18 condemnor from proceeding with a condemnation action. Notwithstanding that, any delay  
19 in the project because of the lack of possession should be minimal because the provisions of  
20 A.R.S. § 12-1142.A specifies that the trial of this condemnation action has precedence over  
21 all other civil actions. There is no reason that a speedy trial cannot be held and this case  
22 concluded within several months of the hearing on the right proceed with the condemnation  
23 action set for December 13, 2002.

24 **III. Is the True Purpose of Defendants' and JUL's Actions in this case for an  
25 improper purpose such as Delay, to Cause Unnecessary Expenditures of Funds  
26 by Diversified and/or the Harassment of Diversified?**

26 The actions of JUL in light of the restraining order issued by the ACC on December  
27 1, 2000 (Exhibit E of Plaintiff's A.R.S. § 12-1145 Hearing Memorandum) should be a  
28 sufficient basis to establish the improper motives of the Defendants and JUL in this case.

1 But there is more. On May 17, 2002 Defendants and JUL filed an Objection to Plaintiff's  
2 Application to Condemn Real Property for a Public Works Project ("May 17 Objection")  
3 claiming:

- 4 1. That the Public Works Eminent Domain Law is unconstitutional.
- 5 2. That Diversified is not an "authorized corporation" as that term is defined in  
6 the Public Works Eminent Domain Law.
- 7 3. That the taking is not necessary because other sites are available.
- 8 4. That it was necessary to address a "more necessary" issue because the  
9 Defendants had not asked to be included within the SDWID district through  
10 "inadvertence."
- 11 5. That there was no authority for the Arizona Corporation Commission to  
12 regulate and supervise the Project to meet a requirement of the Public Works  
13 Eminent Domain Law.
- 14 6. That Plaintiff's Complaint is actually "a pre-emptive hostile act" against JUL  
15 and the Defendants.

16 On July 26, 2002 Defendants submitted their Initial Rule 26.1 Disclosure Statement  
17 in which they ratified the May 17 Objection and revealed Defendants' claim that they had  
18 entered into some alleged "agreement to sell" the Subject Property to JUL, but failed to  
19 provide any credible evidence to support that claim<sup>6</sup>. Defendants' Disclosure Statement  
20 supplemented the May 17 Objections with the following additional claims:

- 21 7. Diversified is not authorized to initiate the condemnation action because it  
22 exceeded authority granted by the Arizona Corporation Commission ("ACC").
- 23 8. Proceedings may be unconstitutional because A.R.S. § 12-1155 is  
24 unauthorized delegation of power for private party to take private property for  
25 a "truly private purpose."
- 26 9. The term "public use" is not defined in the Public Works Eminent Domain  
27 Law.
- 28 10. Diversified's proposed taking is not necessary.
- 11 11. That Diversified had to meet the private takings requirements for way of  
12 necessity.
- 13 12. That Diversified could not meet the claimed balancing requirement of the

---

14 <sup>6</sup>Defendants' claim of an agreement with JUL is more fully discussed later in this  
15 memorandum.

greatest public good and least private injury.

13. That JUL needed the Subject property to be able to further its business operations by reselling water to SDWID.

On October 23, 2002, Defendants and JUL submitted responses to extensive discovery requests which ratified the legal positions taken in the May 17 Objections and Defendants' Disclosure Statement.

Based on the forgoing pronouncements, Plaintiff engaged in substantial research to refute the claims of Defendants and JUL which were incorporated in Plaintiff's A.R.S. § 12-1145 Opening Pre-hearing Memorandum. However, Defendants and JUL have now abandoned all objections other than objections 2 and 10. In an apparent desperate move taken in view of the lack of legal support for their opposition to this action, and contrary to the specific order of the Arizona Corporation Commission, the Defendants have informed Diversified for the first time through its Opening Brief that the Subject Property was "conveyed" to JUL in the last few weeks and that SDWID plans to acquire the Subject Property from JUL<sup>7</sup>. Plaintiff has been required to engage in needless research and preparation for its Opening Memorandum on issues which are no longer being contested.

Defendants' claimed sale of the Subject Property to JUL and supposedly to SDWID appears to be an effort in manipulation. A written contract for the purchase of the Subject Property did not exist between the owner Defendants and JUL prior to the production of the Defendants' discovery on October 23, 2002. SDWID did not participate or take any action on the Subject Property for all of these months even though SDWID's attorneys are the counsel in this case. The transfer of the Subject Property with a recorded notice of *Lis Pendens* in place at this late date to JUL pursuant to some newly created arrangement done

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<sup>7</sup>To date, Plaintiff has not been provided with any documents supporting the claimed contract or sale to JUL despite specific discovery requests on this very issue. Diversified has not been able to verify the sale through its independent investigation. Nor has there been any proof that a conveyance of the property to JUL or SDWID has in fact taken place. To Plaintiff's knowledge there is no provision for funding SDWID to this date, and there does not appear to have been any authorization for SDWID to acquire the subject Property from JUL or for JUL to take any steps in this case for SDWID.

1 without justification and in not in good faith. This manipulation by non-party JUL is just a  
2 continued effort to cause the further harassment and additional expenditure of legal fees and  
3 costs and cause delay.

4 Further, the claim by the Defendants that the SDWID will enter this proceeding is  
5 highly speculative. It is also worrisome and concerning that Defendants could announce that  
6 the SDWID "will be the owner of the subject Property" and that the SDWID "will make an  
7 appearance and object to Diversified's action." How is it that the Defendants and JUL know  
8 the actions of a public body prior to any open hearings or public meetings where interested  
9 parties are to be heard and the issues discussed and studied? SDWID has not conducted any  
10 properly noticed public meeting of the Board of Directors of SDWID (which is, by statute,  
11 the Pinal County Board of Supervisors) or conducted any hearing where interested parties  
12 could be heard. No engineering reports, analysis, or studies have been conducted or well  
13 procurement process initiated as statutorily required for county improvement districts. No  
14 district engineer has been appointed to SDWID under A.R.S. § 48-913 to study the water and  
15 production requirements of SDWID and the need for the Subject Property. No plans or  
16 estimates of costs have been adopted under A.R.S. § 48-914 or has there been any  
17 compliance with the authority necessary to expend funds as required by the Arizona Revised  
18 Statutes under Title 48, Chapter 6. The gamesmanship of Defendants appears to be  
19 continuing and Defendants appear to be attempting to circumvent the Arizona statutes  
20 governing county improvement districts.

21 This Court should not determine issues regarding the authority of SDWID which are  
22 being decided by the Superior Court of Maricopa County. However, because of the need to  
23 proceed with this matter without further delay, for the purpose of the hearing set for  
24 December 13, 2002 this Court should assume that SDWID is a legally formed body. Should  
25 this Court determine, assuming SDWID is legal, that this condemnation action not proceed  
26 because SDWID has a greater right, then Plaintiff asks that this proceeding be stayed until  
27 the conclusion of the proceedings in Maricopa County.

## CONCLUSION

1  
2 The defenses raised in opposition to this condemnation action are not based on a  
3 genuine dispute of the Defendants. The Defendants actions are being financed one hundred  
4 percent (100%) by Johnson Utilities, L.L.C. to further Johnson Utilities objectives. Johnson  
5 Utilities has already been restrained for its improper actions against Diversified including its  
6 previous attempt to take the Subject Property. Though the SDWID should be irrelevant in  
7 this case, JUL is improperly attempting to force JUL and the SDWID into these proceedings  
8 as a last ditch effort to reach into Diversified's exclusive internal operations and deprive  
9 Diversified of this well.

10 The water services provided by Diversified are too critical to its community to delay  
11 the addition of its second water production facility any longer. Diversified has complied  
12 with the statutory conditions for this action. The Subject Property was selected using sound  
13 principles for the operations of water companies. Diversified's clear and immediate need for  
14 the additional water resources provided by the Subject Property has already been studied,  
15 analyzed, encouraged and approved by two (2) Arizona state agencies.

16 Diversified does not ask this Court to resolve the differences which exist between  
17 Diversified and JUL and the Defendants, but merely to keep the facts clearly in mind  
18 considering JUL's motivation in seeking to acquire the Subject Property. Based on the law  
19 and the prevailing facts, Diversified submits that this Court should enter an interim order that  
20 Diversified has met the statutory requirements for condemning the Subject Property and to  
21 set this matter for a jury trial for the determination of just compensation due the Defendants  
22 for their interest in the Subject Property.

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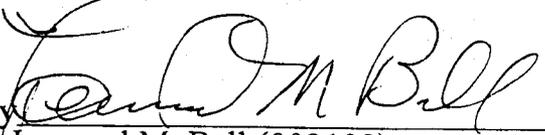
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DATED this 25th day of November, 2002.

BELL LAW OFFICE

By 

Leonard M. Bell (002108)  
365 East Coronado, Suite 200  
Phoenix, Arizona 85004  
Attorney for Plaintiff

**COPY** of the foregoing delivered  
this 25<sup>th</sup> day of November, 2002, to:

Honorable William J. O'Neil  
Judge of the Superior Court  
Pinal County Superior Court  
31 North Pinal Street, Building E  
Florence, Arizona 85232

**COPY** of the foregoing mailed  
this 25<sup>th</sup> day of November, 2002, to:

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