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**ORIGINAL**

**EXCEPTION**

BEFORE THE ARIZONA CORPORATION COMMISSION

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**COMMISSIONERS**  
KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2010 JUL 12 P 3: 53

Arizona Corporation Commission

**DOCKETED**

JUL 12 2010

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF DIVERSIFIED  
WATER UTILITIES, INC. TO EXPAND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

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

DIVERSIFIED WATER UTILITIES, INC.'S  
EXCEPTIONS TO RECOMMENDED  
ORDER AND ALTERNATIVE REQUEST  
FOR HEARING

Diversified Water Utilities, Inc., ("Diversified"), pursuant to A.A.C. R14-3-110(B), hereby files exceptions to the Recommended Order filed July 1, 2010 in the above entitled matter and requests either the time to comply with the two outstanding requirements of Decision No. 70181<sup>1</sup> be extended two (2) years or, alternatively, a hearing be conducted on whether Diversified should be granted such additional time. For the Commissioner's convenience, a copy of Decision No. 70181 is attached as Exhibit A. By letter dated June 30, 2010 addressed to Docket Control and docketed July 6, 2010, Wolfkin Farms, the land owner of Section 13, T3S, R8E, Pinal County, Arizona, indicates an "urgent need" for a water provider. See Exhibit B attached hereto. This letter supports either extending the time for compliance or conducting a hearing on the issue of whether additional time should be granted.

<sup>1</sup> As discussed below, Decision No. 70181 requires Diversified file, within two years, a) an ADEQ certificate of approval to construct the first development within the extension area and b) the developer's Certificate of Assured Water Supply for the first development within the extension area.



1 Diversified expended significant time, funds and effort in order to secure the  
2 extension granted by Decision No. 70181.<sup>2</sup> Thereafter, Diversified worked with  
3 representatives of Wolfkin Farms, LLC reviewing plans for water facilities and in processing  
4 an application for a Certificate of Assured Water Supply. However, ADWR has changed the  
5 way it administers its Assured Water Supply rules. In response and in order to aide Wolfkin  
6 Farms in its development of Section 13, Diversified has expended tens of thousands of dollars  
7 to retain Southwest Groundwater to conduct a new area-wide hydrology study and to apply  
8 for and process a new Physical Availability Demonstration.<sup>3</sup> Approximately a year ago,  
9 Wolfkin Farms, LLC stopped actively participating with Diversified in these efforts.  
10 Diversified continued to work with ADWR until Wolfkin Farms, LLC would not commit to a  
11 development schedule.

12 With the two year deadline nearing, Diversified on January 20, 2010 filed a  
13 Request for an Extension to Comply with Decision No. 70181, seeking not less than two (2)  
14 additional years to comply. Staff, however, "determined there was no immediate need for  
15

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16 <sup>2</sup> Its efforts actually commenced in 2000 through a complex proceeding involving Johnson Utilities,  
17 LLC, H2O, Inc. and Queen Creek Water Company involving certification of lands adjoining  
18 Diversified's then existing certificated area. *See, e.g.,* Decision No. 63960, dated September 21,  
19 2001. During the pendency of the Commission certification proceedings, the Pinal County Board of  
20 Supervisors adopted a resolution purporting to create the Skyline Domestic Water Improvement  
21 District over the area for which Diversified sought a certificate, as well as overlapping much of  
22 Diversified's certificated area and George Johns attempted to purchase Diversified's expansion well  
23 within Diversified's certificated area. While Staff and the Administrative Law Judge recommended  
24 Diversified's certificated area be extended, Decision No. 63960 deferred action "because of  
25 uncertainty with respect to the Skyline District and potential litigation in state court." Decision No.  
63690, Finding of Fact 171 at p. 32. After two years of litigation, Pinal County rescinded the  
resolution and Diversified re-instituted its efforts to extend its certificated area. Thereafter Johnson  
Utilities, LLC filed a partially competing application. The overlap was resolved when Johnson and  
Diversified entered into a Letter of Mutual Understanding, Cooperation and Settlement dated June 20,  
2005 filed in this Docket June 30, 2005. *See* Exhibit E for a copy of the filing docketed with the  
Commission.

<sup>3</sup> Importantly, it is the Developer, not Diversified, that is responsible for securing a certificate of  
assured water supply, as recognized by Decision No. 70181 at page 14.

1 service to support Diversified's request for extension" and, therefore, recommended against  
2 granting Diversified's request for extension. Staff Memorandum dated April 12, 2010.  
3 Despite being ready, willing and able to provide water service within the extended area and  
4 having expended years and tens of thousands of dollars to do so, Diversified was unable to  
5 determine any estimate of when water service would be required or obtain the assistance of  
6 the landowners to comply with Decision No. 70181 and Staff had informed Diversified that  
7 water service was not needed from Diversified. Therefore, on April 13, 2010 Diversified  
8 filed its Notice of Withdrawal of Request for Extension to Comply with Decision No. 70181.

9 **THE EXTENSION SHOULD BE GRANTED OR A HEARING**  
10 **CONDUCTED.**

11 Diversified, simultaneously with filing these Exceptions, is reinstating its  
12 request for a two year extension of time to comply with Decision No. 70181. *See*, Exhibit F  
13 attached hereto. The Decision extended Diversified's certificated area to Section 13 and the  
14 east ½ of Section 14. Diversified has at all times remained ready, willing and able to serve  
15 the extension area granted by Decision No. 70181 in accordance with the Commission rules  
16 and regulations and at the rates and charges established by the Commission.<sup>4</sup> It merely lacked  
17 evidence that the landowners were actively pursuing the development of their lands. The  
18 extension only becomes null and void "after due process." Decision No. 70181 at 14.

19  
20 <sup>4</sup> To the extent Wolfkin Farms may prefer service from another water provider, *James P. Paul Water*  
21 *Co. v. Ariz. Corp. Comm'n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983) provides: "Only upon a  
22 showing that a certificate holder, presented with a demand for service which is reasonable in light of  
23 projected need, has failed to supply such service at a reasonable cost to customers, can the  
24 Commission alter its certificate." Moreover, as part of the Letter of Mutual Understanding,  
25 Cooperation and Settlement Johnson Utilities, LLC and Diversified agreed, in the furtherance of the  
public interest and economies of scale, not to seek to extend their certificates or operations into the  
other's planning area or to support the efforts of any other water provider to do so. *See*, Exhibit E;  
Decision No. 70181, Finding of Fact 22 at 7. Johnson Utilities further expressed its affirmative  
support for the extension of Diversified's certificate into Sections 13, 14 15 and a portion of Section  
16. Johnson Utilities is the only other existing water provider with a certificated area or water  
facilities adjacent to Sections 13 and 14.

1 Therefore, Diversified, at this time, is the certificated provider for the area. The June 30,  
2 2010 letter filed by Wolfkin Farms, LLC provides affirmative evidence that the landowners  
3 are actively moving forward with the development of Section 13 and that there exists an  
4 urgent need for a certificated water provider. As such, the letter provides the affirmative  
5 evidence Diversified had previously lacked and constitutes justification for the extension of  
6 time.

7 WHEREFORE, Diversified respectfully requests:

8 1. The Hearing Division unilaterally withdraw its recommendation  
9 submitted in this matter (or the Commission pull it from any Open Meeting agenda) and  
10 either submit an amended recommendation granting Diversified's request for a two year  
11 extension to comply with Decision No. 70181 or set the matter for hearing to determine  
12 whether the extension is appropriate; or

13 2. The Commission reject the recommendation submitted by the  
14 Hearing Division and either adopt a Decision granting Diversified's request for a two year  
15 extension to comply with Decision No. 70181 or remand the matter for hearing to determine  
16 whether the extension is appropriate.

17 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of July, 2010.

18 CURTIS, GOODWIN, SULLIVAN,  
19 UDALL & SCHWAB, P.L.C.

20  
21 By:   
22 William P. Sullivan  
23 501 East Thomas Road  
24 Phoenix, Arizona 85012  
25 Attorneys for Diversified Water Utilities, Inc.

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 12<sup>th</sup> day of July, 2010, I caused the foregoing  
3 document to be served on the Arizona Corporation Commission by delivering the original and  
4 thirteen (13) copies of the above to:

5 Docket Control  
6 Arizona Corporation Commission  
7 1200 West Washington  
8 Phoenix, Arizona 85007

9 Copies of the foregoing e-mailed  
10 this 12<sup>th</sup> day of July, 2010 to:

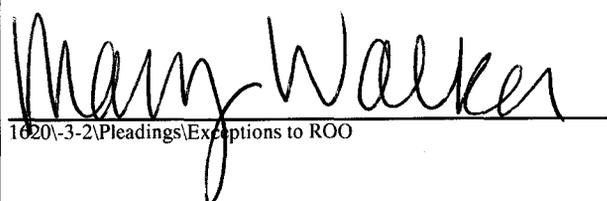
11 Dwight Nodes, Administrative Law Judge  
12 Arizona Corporation Commission  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

15 Janice Alward, Esq.  
16 Legal Division  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Steve Olea, Director  
21 Utilities Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, Arizona 85007

25 Copy of the foregoing mailed  
this 12<sup>th</sup> day of July, 2010 to:

Edward J. Humphyres  
3850 E. Baseline Road, Suite # 123  
Mesa, Arizona 85206

  
1020\3-2\Pleadings\Exemptions to ROO

# EXHIBIT A

NOTE FILE NO. 1620-3-2  
XEROX ALL PLEADINGS   
COPIES TO MAC WPS MAW  
STAMPED DH DATE 2-27-09  
ROUTED TO MAC WPS MAW  
DO NOT FILE UNTIL  
ALL ITEMS CHECKED  
AND INITIALED DH

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

FEB 27 2008

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

DOCKETED BY nr

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

DOCKET NO. W-02859A-04-0844

DECISION NO. 70181

OPINION AND ORDER

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

**BY THE COMMISSION:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 \* \* \* \* \*

13 Having considered the entire record herein and being fully advised in the premises, the  
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

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

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

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

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

1 East, Pinal County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 effective on October 22, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **Hook-Up Fees and AIAC**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **Compliance with Tax Laws**

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

1 property taxes in Arizona.

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

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

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

9 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

21 **ORDER**

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

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

1 Order of the Commission.

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

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

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

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

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

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6

7    
8 CHAIRMAN COMMISSIONER

9     
10 COMMISSIONER COMMISSIONER COMMISSIONER

11 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
12 Executive Director of the Arizona Corporation Commission,  
13 have hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this 27<sup>th</sup> day of Feb., 2008.

16   
17 DEAN S. MILLER  
18 INTERIM EXECUTIVE DIRECTOR

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

21 DISSENT \_\_\_\_\_  
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23 SNH:db  
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SERVICE LIST FOR: DIVERSIFIED WATER UTILITIES, INC.

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

William P. Sullivan  
CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, PLC  
501 East Thomas Road  
Phoenix, AZ 85012  
Attorney for Diversified Water Utilities, Inc.

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

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EXHIBIT A

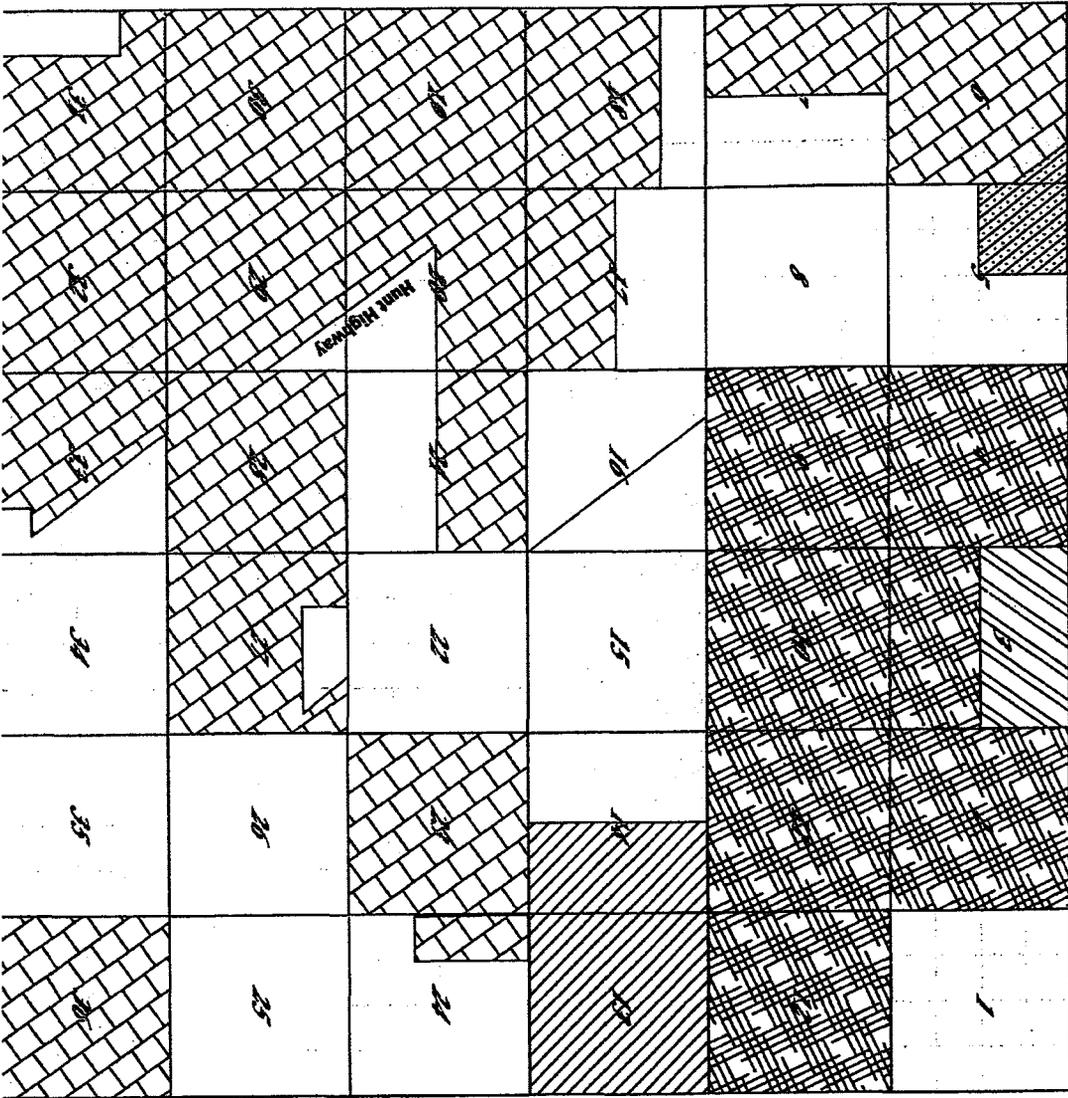
LEGAL DESCRIPTION

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

EXHIBIT A

**COUNTY: Pinal**

**RANGE 8 East**



**TOWNSHIP 3 South**

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

Map No. 11

DECISION NO. 70181

# EXHIBIT B

OPEN MEETING AGENDA ITEM

**EDWARD J. HUMPHRYES  
ATTORNEY AT LAW**

3850 East Baseline Road, Suite #123  
Mesa, AZ 85206

Phone: (480) 969-8000

Fax: (480) 969-0000

edh@swproperties.com

State Bar Number 010931

**ORIGINAL**

**RECEIVED**

2010 JUL -6 P 2:00

AZ CORP COMMISSION  
DOCKET CONTROL

**REQUEST FOR HEARING ON  
DOCKET NO. W-02859A-04-0844  
CONCERNING DECISION NO. 70181**

June 30, 2010

Sent via Mail and Registered Mail

Docket Control Center  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Arizona Corporation Commission

**DOCKETED**

JUL - 6 2010

DOCKETED BY

To Whom It May Concern,

This letter is our official request for the setting of a hearing on the above referenced matter. My clients, Wolfkin Farms, LLC ("Wolfkin"), own the majority of the land that is under the CC & N that was conditionally granted by Decision No. 70181. It appears to us that the CC & N has become null and void under the express conditions of the Decision due to nonperformance by Diversified Water Utilities, Inc. ("Diversified"). Diversified has withdrawn its request to extend the time period for meeting the conditions of the Decision and has stated in a letter that they are no longer making any attempt to meet the conditions. However, we are unclear as to whether the CC & N is officially null and void or if further action by the Corporation Commission is required.

Due to this uncertainty, Diversified states that they are still the water provider, preventing my client from contracting with a water company that has the current ability to provide water to their land. Wolfkin has an urgent need to have a final adjudication of the matter, so that a qualified water provider can be obtained. Wolfkin is seeking a renewal in August of a preliminary plat on its land and needs to show that a viable water provider is available. Wolfkin is also working with Pinal County on the extension of a long term Development Agreement with the County that also needs to be negotiated in August.

Wolfkin will be irreparably harmed if it cannot timely seek and obtain a properly certificated water provider with an assured water supply certificate. We are formally requesting that a hearing be scheduled as soon as possible with the Commission in order to formally void the conditional CC&N, as granted in Decision No. 70181 so that a final determination can be obtained on this matter.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Ed Humphryes". The signature is written in black ink and is positioned above the typed name.

Edward J. Humphryes, Esq.

cc: Wolfkin Farms, LLC

# EXHIBIT C

**WOLFKIN FARMS, L.L.C.**

---

3850 E. Baseline Road, Suite 123  
Mesa, AZ 85206  
Phone (480) 969-8000  
Fax (480) 539-7321

October 24, 2006

Scott W. Gray  
Diversified Water Utilities, Inc.  
2850 East Camelback Road, Suite 200  
Phoenix, AZ 85016

Re: Request for Water Service

Dear Mr. Gray:

Please accept this letter as a formal request for water service from Diversified Water Utilities, Inc. to approximately 640 acres, more particularly described as follows:

Section 13, Township 3 South, Range 8 East, of the Gila and Salt Rivers Base and Meridian, Pinal County, Arizona (the "Property").

Wolfkin Farms, L.L.C., an Arizona limited liability company, is the owner of the Property and has the authority to make this request. The project will consist of approximately 2,100 lots to be developed in multiple phases.

The Property is contiguous to your existing certificated area and outside of any existing water service area. Please take the necessary steps to extend your certificate of convenience and necessity to include the Property.

Sincerely,



Penny Wolfswinkel  
Manager

PW:dt

# EXHIBIT D

Janet Napolitano  
Governor

Mark Winkleman  
State Land  
Commissioner

Arizona  
State Land Department



1616 West Adams Street Phoenix, AZ 85007 [www.land.state.az.us](http://www.land.state.az.us)

April 26, 2005

Diversified Water Utilities, Inc.  
Attn: Scott W. Gray  
2850 E. Camelback Rd., Suite 200  
Phoenix, AZ 85016-4316

**RE: Request to add State Trust land to a service area**

Dear Mr. Gray:

On March 22, 2005, you notified the Arizona State Land Department of your application to the Arizona Corporation Commission (ACC) to add Section 14, Township 3 South, Range 8 East to your certificated area. A portion of this section is State Trust land, consisting of 325.46 acres.

After considering comments from within the agency, it has been determined it is in the best interest of the State Trust land to be included in a certificated area for water delivery. However, we wish to remain neutral as to who the water provider should be for this land, so we leave the decision on the holder of the certificated area to the ACC.

If you have any questions, please contact Cynthia Stefanovic, Water Rights and Agriculture Section at (602)542-2669.

Sincerely,

Mark Winkleman  
State Land Commissioner

HAK/

# EXHIBIT E

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

57

JEFF HATCH-MILLER, CHAIRMAN  
MARC SPITZER, COMMISSIONER  
WILLIAM A. MUNDELL, COMMISSIONER  
MIKE GLEASON, COMMISSIONER  
KRISTEN K. MAYES, COMMISSIONER

2005 JUN 30 P 4: 55

AZ CORP COMMISSION  
DOCUMENT CONTROL

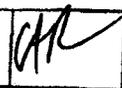
IN THE MATTER OF DIVERSIFIED  
WATER UTILITIES, INC. TO EXPAND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO INCLUDE ALL OF  
SECTION 13, 14, 15, 23 AND THAT  
PORTION OF SECTION 16 EAST OF  
RAILROAD TRACKS ALL IN T3S, R83,  
PINAL COUNTY, ARIZONA.

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

Arizona Corporation Commission

DOCKETED

JUN 30 2005

DOCKETED BY 

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES COMPANY FOR  
AN EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR WATER SERVICE.

DOCKET NO. WS-02987A-04-0869

JOINT SETTLEMENT STATEMENT  
OF JOHNSON UTILITIES COMPANY  
AND DIVERSIFIED WATER  
UTILITIES, INC.

Johnson Utilities, LLC, d.b.a. Johnson Utilities ("Johnson") and Diversified Water Utilities, Inc. ("Diversified") (collectively the "Companies") file this joint settlement statement in conjunction with submitting to the Arizona Corporation Commission (the "Commission") their Letter of Mutual Understanding, Cooperation and Settlement dated June 20, 2005, a copy of which is attached.

Johnson and Diversified hold certificates of convenience and necessity to provide domestic water service in Pinal County, Arizona. Johnson also holds a certificate of convenience and necessity to provide sewer service. Their respective certificated areas are in close proximity to one another. Over the past five years, the Companies have both sought to

1 extend their certificated areas to encompass the same territory. The competing applications  
2 have caused the Companies to incur significant costs and created uncertainty on the part of  
3 landowners as to which Company would provide water service.

4 In order to allow both Companies to concentrate on the operation of their  
5 respective systems, to serve their existing customers and to focus on integrating the  
6 substantial growth of the area into those systems, including economies of scale, Diversified  
7 and Johnson have agreed that it is most effective, efficient and beneficial for all concerned,  
8 including the public and the appropriate regulators, for the Companies to cooperate with each  
9 other. The Letter of Mutual Understanding, Cooperation and Settlement sets forth the  
10 principles by which Johnson and Diversified agree to cooperate on a going forward basis.  
11 The settlement permits both Companies to devote their energies and resources to operating  
12 their respective Companies instead of challenging each other before the various agencies and  
13 courts. The settlement also ensures that the two Companies will avoid unnecessary  
14 duplication of water facilities and eliminates confusion as to which entity is willing to  
15 provide water service within delineated planning areas.

16 The Companies agree that the appropriate demarcation of the southern  
17 boundary of Diversified and the northern boundary of Johnson for water service planning is a  
18 line running from west to east along Bella Vista Road along the Bella Vista Road alignment  
19 between the Union Pacific Railroad (the "Tracks") and the Central Arizona Project Canal (the  
20 "Canal"). The western boundary of Diversified and the eastern boundary of Johnson will be  
21 the Tracks, north of Bella Vista Road. The eastern boundary of Diversified and the western  
22 boundary of Johnson on the east for the area south of Skyline Road will be the Canal north of  
23 Bella Vista Road. There is a vast area of land owned by the State of Arizona east of the  
24 Canal and north of Skyline Road, which is not addressed by the Companies' settlement.  
25

1           The Companies also agree that they will not seek to extend their certificates or  
2 operations within the other's planning area. The Companies have further agreed that in  
3 furtherance of public interest and economies of scale, they will not support the provision of  
4 domestic water service by any other water provider within their respective planning areas.

5           Consistent with the Letter of Mutual Understanding, Cooperation and  
6 Settlement:

- 7           1. Johnson hereby supports Diversified's request to extend its CC&N to  
8 encompass all of sections 13, 14 and 15 and that portion of section 16  
9 east of the Tracks, all in T3S, R8E G&SRB&M, Pinal County, Arizona;  
10 and  
11           2. Diversified hereby supports Johnson's request to extend its CC&N to  
12 encompass section 23, T3S, R8E, G&SRB&M, Pinal County, Arizona.

13           The Companies further support the amendments of their respective applications  
14 to comport with the Letter of Mutual Understanding, Cooperation and Settlement.

15           Further the Companies respectfully request that the Commission, as part of its  
16 Order entered in these dockets, acknowledge the efforts of the Companies and find that the  
17 Letter of Mutual Understanding, Cooperation and Settlement is consistent with the public  
18 interest.

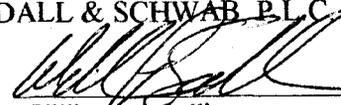
19           RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2005.

21 SALLQUIST & DRUMMOND, P.L.L.C.

22 By:   
23 \_\_\_\_\_

24 Richard L. Sallquist  
25 2525 East Arizona Biltmore Circle, #117  
Phoenix, Arizona 85016  
Attorneys for Johnson Utilities L.L.C.

CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.

By:   
\_\_\_\_\_

William P. Sullivan  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090  
Attorneys for Diversified Water  
Utilities, Inc.

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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 30<sup>th</sup> day of June, 2005, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and seventeen (17) copies of the above to:

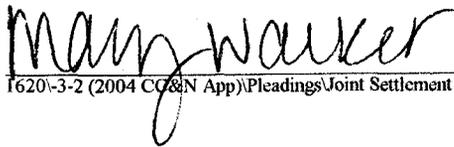
Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered  
this 30<sup>th</sup> day of June, 2005 to:

Dwight D. Nodes, Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Jason Gellman, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

  
16201-3-2 (2004 CC&N App)\Pleadings\Joint Settlement Statement.doc

# JOHNSON UTILITIES COMPANY L.L.C

5230 East Shea Boulevard \* Scottsdale, Arizona 85254

PH: (480) 998-3300; FAX: (480) 483-7908

June 20, 2005

Mr. Scott W. Gray  
Diversified Water Utilities, Inc  
2850 E. Camelback Road, Suite 200  
Phoenix, Arizona 85016-4316

Re: Letter of Mutual Understanding, Cooperation, and Settlement

Dear Scott:

I enjoyed meeting with you and Bill Sullivan on Thursday, May 12, 2005, to discuss the common interests of Johnson Utilities, L.L.C. ("Johnson") and Diversified Water Utilities, Inc. ("Diversified"). Johnson and Diversified (collectively referred to as the "Companies") enjoy the benefits and burdens of operating utilities in one of the fastest growing areas in the country.

To allow both companies to concentrate on the operation of their respective systems to serve their existing customers, and to focus on integrating the substantial growth of the area into those systems, including economies of scale, we agree that it would be most effective, efficient and beneficial to all concerned, including the public and the appropriate regulators, that the Companies cooperate with each other in serving this area consistent with the settlement principles set forth in this letter (the "Agreement").

Given the fact that there are pending, and/or soon-to-be filed, Certificate of Convenience and Necessity ("CC&N") Applications by both Companies before the Arizona Corporation Commission (the "Commission"), there appears to be a logical planning area for the respective companies that we can both support and that will settle any potential disputes in that regard. Again, this will permit both Companies to devote their energies and resources to operating the Companies instead of challenging each other before the various agencies and courts.

The water utility plant required to serve the area between the two existing utilities will be very expensive to construct. The duplication of water facilities by the Companies in this area would be a disservice to the Companies and future customers. Based upon our combined knowledge of the present and future demand for water and wastewater services in the area, as well as the existing utility plants of the Companies, we have agreed that the best and most effective development of the area consistent with the public interest would be to establish Planning Areas to ensure water and sewer needs of future growth can be met in an economical and reliable fashion.

Based on the foregoing considerations, the Companies agree that the appropriate demarcation of the southern boundary of Diversified, and the northern boundary of Johnson, for water service planning, would be a line running West to East along the Bella Vista Road alignment between the Union Pacific Railroad (the "Tracks") and the Central Arizona Project Canal (the "Canal"). The western boundary of Diversified, and the eastern boundary of Johnson will be the Tracks, north of Bella Vista Road. The eastern boundary of Diversified, and the

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JUN 29 2005

CURTIS, GOODWIN, SULLIVAN

western boundary of Johnson on the East for the area South of Skyline Road will be the Canal north of Bella Vista Road. This letter does not address water utility service to the vast area of land owned by the State of Arizona East of the Canal and North of Skyline Road. The above-described lines define and divide what will hereinafter be referred to as the Planning Areas of the Companies. A sketch of the boundaries of the respective Planning Areas is depicted on the map attached hereto as Exhibit A.

The Planning Areas being agreed upon by the Companies, and with the pending CC&N Applications of the Companies in their various procedural postures, the parties have entered into this Agreement and to the following actions:

1. As soon as practicable, Diversified will file an Application to Intervene and intervene in the Johnson CC&N Application, Docket No. WS-02987A-05-0088, regarding the approximate 100 acre parcel located at the southeast corner of Bella Vista Road and Quail Run Lane, which intervention will not be opposed by Johnson.

2. Diversified and Johnson will not object to the May 11, 2005 Procedural Order issued in the competing CC&N Applications of Diversified and Johnson in Docket Nos. W-02859A-04-0844 and WS-02987A-04-0869, except as may be necessary to pursue and implement this Agreement.

3. On or before June 30, 2005, the parties shall jointly file this Agreement and a Joint Settlement Statement in all three of the above Dockets pursuant to which:

(a) The boundaries of and the rationale for the foregoing Planning Areas will be set out and the Companies, their officers, directors and employees will: (i) take no action to provide water service within the other Company's Planning Area; (ii) not oppose and, if requested, will support, the provision of water service by Diversified within Diversified's Planning Area and by Johnson within Johnson's Planning Area; and (iii) not support the provision of domestic water service by any other water provider within the Planning Areas.

(b) Diversified will modify its CC&N Application in Docket No. WS-02859A-04-0844 to be consistent with the Diversified Planning Area and as otherwise required under this Agreement.

(c) Johnson will withdraw its CC&N Application for Section 13 West of the CAP Canal, in Township 3 South, Range 8 East, G&SRB&M, Pinal County Arizona ("Section 13") and withdraw its objections to Diversified's modified CC&N Application in Docket No. WS-02859A-04-0844 with respect to the Diversified Planning Area. Johnson will support the modified Application of Diversified in Docket No. WS-02859A-04-0844.

(d) Diversified will withdraw its objections to Johnson's CC&N Application in Docket No. WS-02987A-04-0869 as modified by the deletion of Section 13 and as otherwise required under this Agreement. Diversified will support the modified Application of Johnson in Docket No. WS-02987A-04-0869, as well as the Application of Johnson in Docket No. WS-02987A-05-0088.

(e) Johnson will file an application for an extension of its wastewater CC&N for all areas within Diversified's CC&N for which Johnson has received a request for sewer service.

(f) Johnson will continue to pursue and file new sewer CC&N applications for areas within Diversified's existing water CC&N when Johnson receives a request for sewer service.

(g) The parties will use their best reasonable efforts and work jointly with the Commission Staff to effectuate the above Settlement.

5. The parties will work jointly with the Arizona Department of Environmental Quality ("ADEQ") and the Commission Staff to effectuate a water interconnect agreement and design for emergency service requirements. Though each company will use commercially reasonable efforts to enter into a water interconnect agreement that is mutually acceptable to both parties, this agreement is not contingent upon obtaining a water interconnect agreement between the parties.

6. Diversified shall modify, amend or if necessary file a CC&N Application for the area described in Paragraph 3(a) above. Johnson believes it is in the public interest to recognize and operate within the Planning Areas and will support Diversified and use its commercially reasonable efforts to assist Diversified in obtaining formal Requests for Service from the property owners in the Planning Area of Diversified as modified and set forth in this agreement. Johnson will not use the affidavits previously filed with the Commission on or about April 29, 2005 in conjunction with Johnson's Motion to Continue. Any costs or expenses associated with the actions taken by each party under Paragraph (6), shall be the responsibility of the individual party.

7. So as to permit the development of Diversified's water CC&N area, Johnson will file appropriate applications for wastewater CC&Ns for developments for which Johnson does not now hold a CC&N, and which are within Diversified's existing or proposed CC&N area. Johnson will file those applications as the property owners of those areas request wastewater service. Johnson does not propose to extend wastewater CC&N applications for areas within Diversified's existing or proposed CC&N areas that are currently or will receive wastewater service via septic tank systems.

8. Johnson and Diversified will file a Termination of Water Service Tariff, substantially in the form attached hereto, that will permit Diversified to assist Johnson in collection of delinquent wastewater billings to Johnson's wastewater-only customers who also

receive water service from Diversified. Diversified will assist Johnson in identifying customers within the existing and proposed CC&N areas of Diversified for wastewater service requirements. The Termination of Water Service Tariff will apply to existing and proposed Diversified CC&N areas. Johnson and Diversified agree to work jointly to ensure that each company collects its appropriate Commission approved reconnection charge for every water service and sewer terminated under the appropriate tariffs, due from the customer so terminated. Johnson and Diversified agree to forward or compensate the other Company for reconnection charges that are due the other company.

9. Johnson and Diversified will, now and in the future, cooperate with each other in all regulatory and operating aspects as may reasonably be requested by the other for the purposes of implementing this Agreement.

10. Neither party shall acquire any wells within the Planning Area or existing water CC&N service area of the other without the written permission of the other, which permission shall be at the sole discretion of the party with the Planning Area or existing water CC&N service area.

11. Neither party, including their owners, members, directors and officers or their agents, shall promote, organize, encourage or participate in a county improvement district or like governmental entity attempting to provide utility services within the service area or Planning Area of the effected party currently provided by the effected party.

12. The term of this Agreement shall be for a thirty (30) year period and shall be renewed automatically for up to ten successive five (5) year terms unless terminated prior to the start of the five year term by providing written notice of termination to the other Company.

13. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.

14. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between the Companies, and it shall be construed liberally to fulfill its purpose.

15. In the event suit is brought or an attorney is retained by either Company to this Agreement to enforce the terms of this Agreement or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

16. Nothing herein shall be deemed an attempt to modify an Order, Decision, Tariff, rule or regulation of the Arizona Corporation Commission, but this Agreement does constitute the mutual commitment of Diversified and Johnson to work together and obtain Orders, Decisions, Tariffs, rules and/or regulations that are consistent with this Agreement.

Mr. Scott Gray  
June 20, 2005  
Page 5

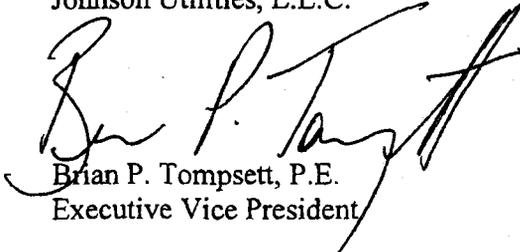
17. In the event that any provision of this Agreement is waived at any time or times by either party or is rendered invalid or unenforceable by any court of competent jurisdiction, such waiver shall not be deemed a waiver of any other provision of this Agreement or a waiver for any other time or times and no such holding shall invalidate or render unenforceable any other provision hereof. Waiver of a provision related, by its terms, to a specific act of either party, or to a specific event, shall not be deemed to be a waiver of any other acts or events contemplated by such provision.

18. This Agreement constitutes the entire Agreement between the parties. All prior agreements between the parties related to the subject matter of this Agreement made either orally or in writing shall be deemed to be superseded hereby.

If the above properly and completely states the agreement between the Companies regarding operations within the respective Planning Areas, please acknowledge both copies of this Letter of Understanding, Cooperation, and Settlement as indicated below and return one to me. In executing this letter, the undersigned represent and warrant that they are fully authorized to enter into this Agreement and to bind the Company, its officers, directors, employees and agents to the terms and conditions set forth above.

We are looking forward to working cooperatively with your Company for the benefit of all of our customers and the community at-large.

Sincerely,  
Johnson Utilities, L.L.C.



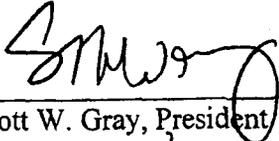
Brian P. Tompsett, P.E.  
Executive Vice President

Mr. Scott Gray  
June 20, 2005  
Page 6

**ACKNOWLEDGED AND AGREED:**

I hereby acknowledge and agree that this Letter of Mutual Understanding, Cooperation and Settlement properly represents the Agreement between the parties.

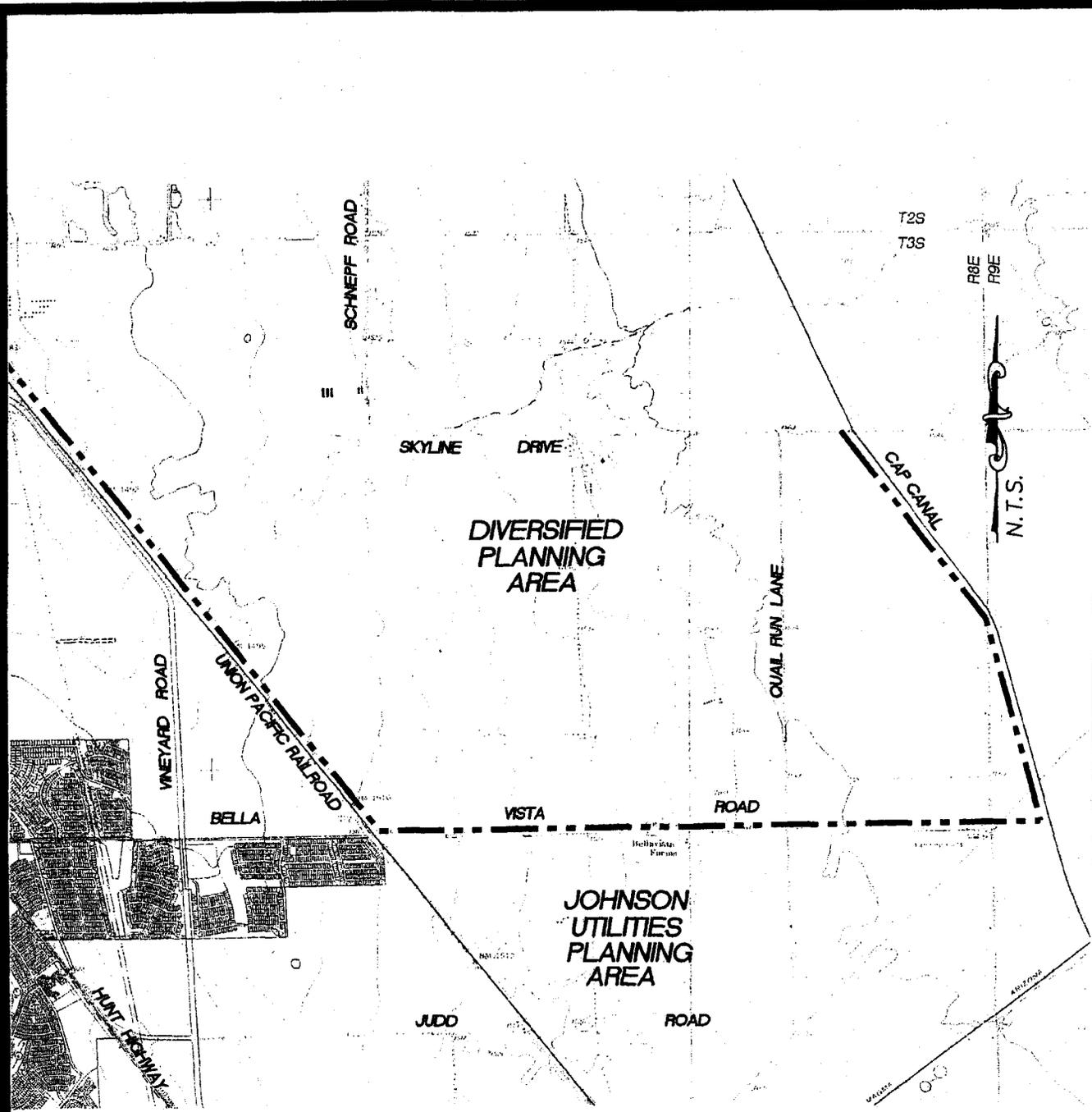
**Diversified Water Utilities, Inc.**

By:   
\_\_\_\_\_  
Scott W. Gray, President

Dated: 6/24/05

Enclosures  
cc: William P. Sullivan  
Richard L. Sallquist

S:\SUNBELT JOBS\3009JUC-General\ACAD\_DRAWINGS\F-cv-cv\water\water-exhibit.dwg Plot: 6/24/2005



**LEGEND**

PLANNING AREA BOUNDARY



**EXHIBIT A**

DRAWN	
DATE	6-20-2005
SCALE	

**SPECIFIC ENGINEERING, LLC.**  
 5230 E. SHEA BOULEVARD SUITE 220  
 SCOTTSDALE, ARIZONA 85254  
 PHONE: (480) 596-6333  
 FAX: (480) 596-6437

## DIVERSIFIED WATER UTILITIES, INC. TARIFF REVISIONS

### TERMINATION OF WATER SERVICE FOR NON-PAYMENT OF WASTEWATER BILL

- I. Company customers who also receive wastewater service from Johnson Utilities Company ("JUC") are hereby notified that the Companies have been authorized by the Commission that in the event the wastewater bill of JUC is not paid in a timely fashion, and following notice by both Companies, the water service from Diversified may be terminated. Water service will not be restored until the customer pays to JUC the delinquent balance, plus all-Reconnection of Service and Deposit Requirements pursuant to the JUC Tariff, and the payment to the Company of the applicable Reconnection of Service charges pursuant to the Company's Tariff. Please see the JUC Tariff in this regard.

Renumber to conform——

JOHNSON UTILITIES L.L.C. dba JOHNSON UTILITIES COMPANY  
TARIFF REVISION

PART FOUR- SECTION III. TERMINATION OF WATER SERVICE FOR NON-  
PAYMENT OF WASTEWATER BILL

- III. Those Company customers who also receive water service from either H2O, Inc. ("H2O") or Diversified Water Utilities, Inc ("Diversified") are hereby notified that the Companies have been authorized by the Commission that in the event the wastewater bill of the Company is not paid in a timely fashion, and following notice by both Companies, the water service from H2O or Diversified may be terminated. Water service will not be restored until the customer pays to the Company the delinquent balance, plus all Reconnection of Service and Deposit Requirements pursuant to PART THREE, SECTION III of this Tariff, and the payment to H2O or Diversified of the applicable H2O or Diversified Reconnection of Service charges. Please see the H2O or Diversified Tariff, as applicable, in this regard.

Renumber to conform

# EXHIBIT F

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman

4 GARY PIERCE

5 PAUL NEWMAN

6 SANDRA D. KENNEDY

7 BOB STUMP

8 IN THE MATTER OF DIVERSIFIED  
9 WATER UTILITIES, INC. TO EXPAND ITS  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY

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

DIVERSIFIED WATER UTILITIES,  
INC.'S REINSTATEMENT OF REQUEST  
FOR EXTENSION OF TIME TO COMPLY  
WITH DECISION NO. 70181

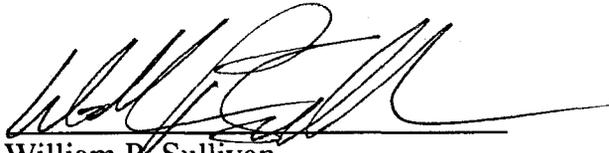
12  
13 Diversified Water Utilities, Inc., ("Diversified") hereby reinstates its Request  
14 for an Extension of Time to Comply with Decision No. 70181 which was initially filed in this  
15 matter January 20, 2010. Thereafter, Diversified, on April 13, 2010 had filed Notice of  
16 Withdrawal of Request for an Extension of Time to Comply with Decision No. 70181. The  
17 sole reason for filing the withdrawal request is that the landowners had failed to secure or  
18 assist Diversified in securing the necessary documents from ADEQ and ADWR to comply  
19 with Decision No. 70181 and had failed to provide any indication that they would require  
20 water service within the 2 year extension period.

21 New information has now come to light that makes the withdrawal  
22 inappropriate. On July 6, 2010 the owners of Section 13, T3S, R8E, Wolfkin Farms, LLC,  
23 docketed a letter dated June 30, 2010 indicating they were actively proceeding with the  
24 development of their lands and were in urgent need of a water provider. A copy of the letter  
25 is attached hereto as Exhibit A. The letter thus indicates there continues to be a present need  
for water service to the lands within the extension area granted by Decision No. 70181.

1 Therefore, Diversified hereby reinstates its request for an extension of not less than two years  
2 to comply with Decision No. 70181 for the reasons set forth above, and as otherwise  
3 evidenced by the record, including, but not limited to Diversified's Request for Extension  
4 filed January 20, 2010 and its Exceptions to the Recommended Order filed July 12, 2010.

5 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of July, 2010.

6 CURTIS, GOODWIN, SULLIVAN,  
7 UDALL & SCHWAB, P.L.C.

8  
9 By:   
10 William P. Sullivan  
11 501 East Thomas Road  
12 Phoenix, Arizona 85012  
13 Attorneys for Diversified Water Utilities, Inc.  
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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 12<sup>th</sup> day of July, 2010, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

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

Copies of the foregoing e-mailed this 12<sup>th</sup> day of July, 2010 to:

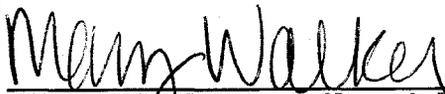
Dwight Nodes, Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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

Copy of the foregoing mailed this 12<sup>th</sup> day of July, 2010 to:

Edward J. Humphyres  
3850 E. Baseline Road, Suite # 123  
Mesa, Arizona 85206

  
\_\_\_\_\_  
1620\3-2\Pleadings\Reinstatement of Request for Extension

# EXHIBIT A

OPEN MEETING AGENDA ITEM

**EDWARD J. HUMPHRYES  
ATTORNEY AT LAW**

3850 East Baseline Road, Suite #123  
Mesa, AZ 85206  
Phone: (480) 969-8000  
Fax: (480) 969-0000  
edh@swproperties.com  
State Bar Number 010931

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2010 JUL -6 P 2:00

AZ CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

**REQUEST FOR HEARING ON  
DOCKET NO. W-02859A-04-0844  
CONCERNING DECISION NO. 70181**

June 30, 2010

Sent via Mail and Registered Mail

Docket Control Center  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Arizona Corporation Commission

**DOCKETED**

JUL - 6 2010

DOCKETED BY *MM*

To Whom It May Concern,

This letter is our official request for the setting of a hearing on the above referenced matter. My clients, Wolfkin Farms, LLC ("Wolfkin"), own the majority of the land that is under the CC & N that was conditionally granted by Decision No. 70181. It appears to us that the CC & N has become null and void under the express conditions of the Decision due to nonperformance by Diversified Water Utilities, Inc. ("Diversified"). Diversified has withdrawn its request to extend the time period for meeting the conditions of the Decision and has stated in a letter that they are no longer making any attempt to meet the conditions. However, we are unclear as to whether the CC & N is officially null and void or if further action by the Corporation Commission is required.

Due to this uncertainty, Diversified states that they are still the water provider, preventing my client from contracting with a water company that has the current ability to provide water to their land. Wolfkin has an urgent need to have a final adjudication of the matter, so that a qualified water provider can be obtained. Wolfkin is seeking a renewal in August of a preliminary plat on its land and needs to show that a viable water provider is available. Wolfkin is also working with Pinal County on the extension of a long term Development Agreement with the County that also needs to be negotiated in August.

Wolfkin will be irreparably harmed if it cannot timely seek and obtain a properly certificated water provider with an assured water supply certificate. We are formally requesting that a hearing be scheduled as soon as possible with the Commission in order to formally void the conditional CC&N, as granted in Decision No. 70181 so that a final determination can be obtained on this matter.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Ed Humphries", with a long horizontal flourish extending to the right.

Edward J. Humphries, Esq.

cc: Wolfkin Farms, LLC