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August 13, 2010

Arizona Corporation Commission
DOCKETED

AUG 20 2010

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

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2010 AUG 20 P 4: 32
AZ CORP COMMISSION
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RE: W-02859A-04-0844 / Diversified Water Utilities, Inc.

To Whom It May Concern,

On behalf of my clients, Wolfkin Farms, LLC ("Wolfkin") this letter is in response to Diversified Water Utilities' ("Diversified") reinstatement of their request for an extension of time to comply with Decision No. 70181, as filed on or about July 12, 2010. It would appear that Diversified's justification for reinstating their prior request for an extension is based on Wolfkin's June 30th letter, a copy of which is attached at **EXHIBIT A**.

Although it is true that Wolfkin has an urgent need to determine who their water provider is or will be; they do not have an immediate need to serve those properties subject to Diversified's service area with water at this time. Diversified has misinterpreted the intent of Wolfkin's June 30th letter as evidence to support their extension. Although the housing market in the southeast valley has slowed down and plans to construct homes on the Wolfkin properties has been temporarily suspended, Wolfkin must continue to meet certain responsibilities in order to keep the property viable and ready for development. Part of those responsibilities includes having a qualified and capable water provider of record, with all the required valid governmental approvals. At this time, we do not believe that Diversified is qualified or capable of meeting those criteria.

Diversified has asserted in their request that they have expended tens of thousands of dollars to retain a consultant to conduct and submit applications to the Arizona Department of Water Resources ("ADWR") in order to obtain a Certificate of Assured Water Supply, and that Wolfkin has "stopped actively participating with Diversified in these efforts." Wolfkin has worked closely with Diversified for well over two years to assist Diversified in their efforts to obtain a Certificate of Assured Water Supply from ADWR, and has in fact paid a minimum of \$70,000.00 in direct costs toward those efforts with nothing to show for it.



However, on April 12, 2010 Wolfkin received a letter from ADWR stating that the hydrological report submitted by Diversified's consultants as part of the Application for a Certificate of Assured Water Supply (DWR No. 27-700539.0000) for the Wolfkin properties was not only incomplete, but that "recent modeling by the Department indicates that the groundwater levels in portions of the East Salt River Valley sub-basin and *specifically in Diversified Water Utilities' service area* either exceed the maximum 100-year depth-to-static water level of 1,000 feet below land surface (bls) or reach bedrock that is shallower than 1,000 feet bls after 100 years of pumping." See attached April 12, 2010 ADWR letter at **EXHIBIT B**. Following the receipt of the April letter from ADWR, Wolfkin replied to ADWR with a request for more time to assess the situation and work to provide additional information.

The ADWR responded on June 14, 2010 with a letter, attached at **EXHIBIT C**, reiterating their position that "groundwater supplies in the area that you are applying for are reaching full allocation status, [that] may prevent you from obtaining a certificate of assured water supply." Given that, we challenge Diversified's statement in their recent request that they have "at all times remained ready, willing and able to serve the extension area granted by Decision No. 70181...." It appears clear that Diversified's ability to get a Certificate of Assured Water Supply and meet the conditions of Decision no. 70181 may be impossible despite their best efforts.

The bottom line is that Diversified was the applicant in Decision no. 70181, and despite their efforts, they have not been able to meet the conditions set forth by the Arizona Corporation Commission, nor have they demonstrated that they will be able to do so anytime in the near future. Wolfkin has cooperated fully and participated financially with Diversified's efforts, and deserve at this point to be able to seek alternative solutions.

On behalf of my client Wolfkin Farms, we respectfully request that a hearing be set to take formal action to void the conditional CC&N, as granted in Decision No. 70181.

Sincerely,



William E. Lally
Ridenour, Hienton & Lewis
201 North Central Avenue, Suite 330
Phoenix, Arizona 85004
Attorney for Wolfkin Farms

ORIGINAL and 13 copies filed
this 20th day of August, 2010 with:

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

COPY of the foregoing HAND-
DELIVERED this 20th day of
August, 2010 to:

Honorable Kristine K. Mayes, Chairman
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Honorable Gary Pierce
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Honorable Paul Newman
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Honorable Sandra D. Kennedy
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Honorable Bob Stump
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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

Wolfkin Letter to ACC
August 20, 2010
Page 4 of 7

Steven M. Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing MAILED
this 20 day of August, 2010 to:

William P. Sullivan
Curtis, Goodwin, Sullivan, Udall & Schwab,
P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012
Attorneys for Diversified Water Utilities,
Inc.

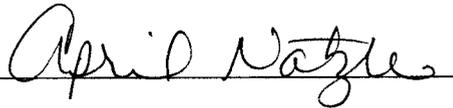


EXHIBIT "A"

(see attached)

OPEN MEETING AGENDA ITEM

**EDWARD J. HUMPHRYES
ATTORNEY AT LAW**

3850 East Baseline Road, Suite #123
Mesa, AZ 85206
Phone: (480) 969-8000
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ORIGINAL

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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, appearing to read "Ed Humphryes".

Edward J. Humphryes, Esq.

cc: Wolfkin Farms, LLC

EXHIBIT "B"

(see attached)

JANICE K. BREWER

Governor



HERBERT R. GUENTHER

Director

ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Second Floor
PHOENIX, ARIZONA 85012-2105

(602) 771-8500

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APR 14 2010

Southwest Properties

April 12, 2010

Ms. Kathy Aleman
Wolfkin Farms, LLC
3850 E. Baseline Rd. Suite 123
Mesa, Arizona 85206

**Re: Application for a Certificate of Assured Water Supply
Bella Vista Section 13 (DWR No. 27-700539.0000)
Administrative Completeness Review**

Dear Ms. Aleman:

We received your application for a Certificate of Assured Water Supply ("Certificate") on June 25, 2008. During our administrative completeness review, we have determined your application to be incomplete. The ADWR Hydrology Division has reviewed the hydrologic study submitted in support of the above referenced application, entitled "Hydrologic Investigation, Physical Availability Demonstration, Diversified Water Utilities, Pinal County, Arizona", prepared by Southwest Ground-water Consultants, Inc., dated July 24, 2009, and, in accordance with ADWR's Substantive Policy Statement on *Hydrologic Guidelines for AWS* signed August 31st, 2007; has identified a list of items in need of clarification and/or correction before Hydrology's review of the application can be completed.

However, before proceeding with additional work on the hydrologic study, we feel it is important for you to understand the groundwater situation in this area before you make a decision to continue. Recent modeling by the Department indicates that the groundwater levels in portions of the East Salt River Valley sub-basin and specifically in Diversified Water Utilities' service area either exceed the maximum 100-year depth-to-static water level of 1,000 feet below land surface (bls) or reach bedrock that is shallower than 1,000 feet bls after 100 years of pumping. In addition to meeting the criteria for the maximum allowable 100-year depth-to-static water level, your hydrologic study must also demonstrate that the associated 100-year water level drawdown from your application's proposed demand will not cause already issued Assured Water Supply (AWS) determinations and complete and correct pending AWS applications within the study area to exceed the maximum 100-year depth-to-static water level of 1,000 feet bls or reach bedrock that is shallower than 1,000 feet bls ("negative impact"). Based on the Department's recent modeling, it appears very likely that any additional large demands in this area, including the proposed demand of your application, would negatively impact those determinations and applications.

Should you decide to proceed with additional work on the hydrologic study, the following is the list of items in need of clarification and/or correction before Hydrology's review of the application can be completed:

Introduction

The applicant utilized the framework of the ADWR SRV8306v2 Regional Groundwater Flow Model (2009) to conduct the proposed subdivision's physical availability demonstration. The model utilized data from 2006 to represent baseline conditions for the 100-year simulation run from 2010 to 2110.

Existing Uses and Demands

- 1) A summary of simulated groundwater demands associated with municipal providers is included on page 15 of the above referenced study. Groundwater pumping was added to the model to simulate demands associated with approved AWS determinations. The applicant indicates that this information was obtained from the Department in 2007. Simulated groundwater pumpage volumes for several water providers are too low while others are too high. The applicant must contact the Department to obtain an updated list of approved AWS determinations and associated demands. The table below lists volumes included in the applicant's model versus volumes calculated by ADWR (ADWR volumes subject to revision)¹:

	Applicant volume (af/yr)	ADWR volume (af/yr)
Apache Junction Water Facilities (WUCFD)	2769	2800
AWC-Apache Junction	6075	6075
AWC-Superior	70	70
Chandler Heights Citrus ID	483	895
Chandler	10472	40456
Mesa	14361	11532
Scottsdale	15070	14058
Tempe	7928	7080
Diversified	15000	15000
H2O	15513	7544
Johnson Utilities	5633	18154
Pima Utilities	1860	1860
Queen Creek	26800	18527
Turner Ranches	483	1633
Gilbert	22294	18141
Phoenix	12559	17751

To account for possible future shortages, the applicant included an additional 3,170 af/yr to the estimated demand for Diversified Water Utilities Company (DWU). The total demand of 15,000 af/yr for DWU was distributed between two existing wells and 53 other locations throughout the CC&N area (page 16). The applicant must include a table identifying wells, locations and associated volumes used to simulate DWU's demands. The table must also indicate whether each well is an existing or a hypothetical well.

¹ The Department has several pending applications of significant volume that are close to being declared complete and correct. Once these applications are declared complete and correct, their water volumes must be included as a committed demand in your model.

- 2) Wells listed as irrigation wells in the Diversified, Queen Creek, H2O and Johnson Utilities Water Companies' service areas were phased to zero pumping by the year 2030 by assuming agriculture would be replaced by municipal pumping. Agricultural recharge in these areas was also phased out. A table listing all wells converted to municipal use showing the original owner and the new assumed municipal provider must be provided. The change from agricultural use to municipal use should result in no net decrease in groundwater pumpage. If there is a net decrease, an explanation must be provided.
- 3) The applicant assumed groundwater withdrawals associated with San Tan ID, Queen Creek ID, and Chandler Heights Citrus ID will be phased out by 2030. Wells from the SRV8306v2 base model for year 1984 were used to distribute New Magma IDD pumpage. A portion of New Magma ID pumpage was phased out by 2030 for locations within the Diversified Water Utilities CC&N area (page 17). The applicant must provide further explanation and justification in support of these assumptions. Clarification is needed as to whether the pumping was completely phased out or replaced by municipal pumping. The applicant must also describe what the net effect of these assumptions has on the overall model budget.

Recharge

- 4) Wells identified as "RECOVERY" in the SRV8306v2 base model were not simulated in the applicant's projected model run (page 16). The applicant must provide a detailed justification for this assumption. A table must be included that identifies the well locations and owners.
- 5) As described on page 16 and 17 of the study, Long Term Storage Credits (LTSCs) accrued up to 2007 were divided by 100 and simulated as an annual groundwater withdrawal for each of the LTSC owners in the East Salt River Valley (ESRV). Existing LTSCs owned by major municipal providers were recovered at each water provider's municipal wells. For all other existing LTSCs, pumping was assigned to the physical location of storage (i.e. irrigation wells within a Groundwater Savings Facilities (GSFs) or pumping wells at an Underground Storage Facility (USF)). All LTSC's not owned by the applicant must be removed from the model from the beginning of the simulation. Any recovery of LTSC's must be simulated inside the area of impact or at well locations permitted by LTSC owner.
- 6) Groundwater pumping associated with GSFs in the ESRV was assumed to increase to non-credit accruing levels in the model by adding 2006 reported stored volumes to the SRV8306v2 base model (page 17). The applicant must provide further explanation and justification to support these assumptions. A table must be included identifying the credit owner, well locations and LTSC volumes recovered for each stress period.
- 7) The applicant must include a discussion on all incidental recharge simulated in the model. This discussion must include recharge rates and volumes and provide a justification for each if they differ from the assumptions originally contained in the SRV8306v2 base model.

Impact Analysis

- 8) The applicant indicates that modifications were made to both well location and depth if a model cell containing a pumping well went dry due to over pumping or created model convergence issues (page 12). The applicant must provide more detail on the adjustments made. These details must include the well identification (i.e. ADWR 55 #), the original and modified well

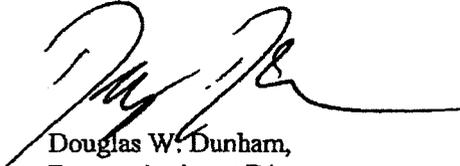
location (both cadastral and model cell), the original and modified assigned model layer, associated water type (i.e. agricultural or municipal), associated water user and annual pumping volume.

Once the above issues are corrected and/or clarified, a comprehensive model review will be conducted.

Please submit the requested information to the Office of Assured Water Supply within 60 days of this notice. Our review of your application has stopped and will resume when we receive the missing items. If you do not respond to this letter within the 60-day time frame, the Department may deny the application.

If you have questions regarding the contents of this letter or the application in general, please do not hesitate to contact Rick Obenshain at 602-771-8622.

Sincerely,



Douglas W. Dunham,
Deputy Assistant Director
Water Management Division

DWD/rbo

cc: *via electronic mail:*
Nathan Miller, Southwest Ground-water Consultants
Eric Lauren, Coe & Van Loo Consultants
Sandra Fabritz-Whitney, Assistant Director, ADWR Water Management
Sharon Morris, ADWR Hydrology

EXHIBIT "C"

(see attached)

JANICE K. BREWER

Governor



HERBERT R. GUENTHER

Director

ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Second Floor
PHOENIX, ARIZONA 85012-2105
(602) 771-8500

June 14, 2010

Ms. Kathy Aleman
Wolfkin Farms, L.L.C.
3850 E. Baseline Road, Suite 123
Mesa, AZ 85206

**Re: Application for a Certificate of Assured Water Supply
Bella Vista Section 13 (DWR No. 27-700539.0000)
Administrative Completeness Review**

Dear Ms. Aleman:

The Arizona Department of Water Resources (Department) received your response to our April 12, 2010 letter on March 28, 2010. During the Administrative review it was determined that your application was incomplete, and our April 12 letter outlined the multiple hydrologic issues that must be addressed before we can declare your application complete and proceed with the process to issue your Certificate of Assured Water Supply. At this time your application remains incomplete. Please refer to our April 12 letter for details of the missing items.

The purpose of our letter was to make sure you understood the enormous task you face if you choose to continue to demonstrate physical availability using the model you submitted with the application. The model as submitted has multiple errors in it that must be corrected. This coupled with the recent observations of the Department that groundwater supplies in the area you are applying for are reaching full allocation status, may prevent you from obtaining a certificate of assured water supply.

In your letter you made several observations I will try and address each one:

- 1) The subject property has been farmed for many years; this may be true, however existing agricultural uses are grandfathered in and are allowed to continue without having to demonstrate a 100-year water supply. In fact, agricultural activity is allowed to mine groundwater to an unlimited depth, where new subdivision development must show a 100-year renewable supply, and groundwater may not exceed 1000' feet below land surface or the bottom of the aquifer, whichever is less. The assured supply demonstration, also must not impact other existing assured supply determinations. Your model, as submitted, does not appropriately take these requirements into account.
- 2) Wells in the area of the subject property have increasing water levels; again, this may be true but this supply may not always be relied upon for anew assured water supply determination. In some areas irrigation districts receive CAP incentive water that will not exist for the entire 100-year duration of the certificate. This means that some of the observed incidental recharge from the irrigation activity may be available for assured supply determinations initially, but it will not exist for the entire 100-year review period. However, other applicants in the area may have already

relied upon this apparent extra supply not making it available for your application. Thus the need to fully account for existing determinations in your area. In other instances, the irrigation district is actually a Groundwater Savings Facility (GSF), and is storing Long-Term Storage Credits (LTSC's) for other entities that own surface or renewable water supplies. In this case the water associated with the apparent rising water table is actually owned by other entities as LTSC's and cannot be used by other assured water supply applicants until such time as the LTSC's holder recover the credits in other areas of the AMA. This is one of the items identified in the incomplete letter; your study did not fully account for the existing credits in your area. In fact your property is located within a GSF facility (the New Magma Irrigation and Drainage District). This would account for the apparent groundwater level increases, but it cannot be relied upon for new subdivisions.

- 3) There currently exist plat approvals and development agreements for this proposed development: Preliminary plat approval and development agreements with counties or other local platting entities do not demonstrate 100-year assured water supplies.
- 4) We are working with the ACC on modifying the development plan; there are currently no ACC or CC&N issues associated with the application.

As discussed in our April 12th letter, the hydrologic study submitted with the application is not acceptable in its configuration. Multiple issues will need to be addressed in order to make the submitted study acceptable to the Department. This has the potential to be a long and difficult process, and may not result in demonstrating the sufficient supplies for your proposed development. The Department will be running a post designation version of the SRV model for the Diversified Utilities, H2O Water Company, and Queen Creek Water Company areas. We will include your application in the initial Department run. Please be aware that this effort by the Department may not demonstrate sufficient supplies for your application.

At this time the Department will not deny your application until this internal modeling effort is complete. If the Department determines sufficient supplies exist using this modeling effort we will continue to process your application. If we determine that insufficient supplies exist we will notify you're of this finding and move to deny your application at that time.

If you have any questions regarding the contents of this letter or the application in general, please do not hesitate to contact Rick Obenshain at (602) 771-8622.

Sincerely,



Douglas W. Dunham
Deputy Assistant Director
Water Management Division

602-771-8590

DWD

Cc: via electronic mail:

Sandra Fabritz-Whitney, Assistant Director, ADWR Water Management