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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER  
MIKE GLEASON  
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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF THE COMPLIANT ) DOCKET NOS. W-02234A-00-0775  
OF DIVERSIFIED WATER UTILITIES, ) W-02987A-00-0775  
INC. AGAINST JOHNSON UTILITIES ) WS-02859A-00-0775  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH THE ) NOTICE OF DISMISSAL OF H2O,  
OPERATIONS OF AN EXISTING LINE, ) INC. WITHOUT PREJUDICE  
PLANT OR SYSTEM. ) AND MOTION TO HOLD  
COMPLAINT IN ABEYANCE

Diversified Water Utilities, Inc. ("Diversified") hereby responds to the Procedural Order dated June 26, 2003 issued by Administrative Law Judge Marc E. Stern ("ALJ Stern") and, pursuant to Rule 41(a), Arizona Rules of Civil Procedure, gives notice of the voluntary dismissal of H2O, Inc. ("H2O") without prejudice and further moves the Arizona Corporation Commission to continue to hold the Complaint as to Johnson Utilities, L.L.C., dba Johnson Utilities Company ("Johnson Utilities") in abeyance pending resolution of certain ongoing litigation. This Notice and Motion is supported by the following:

1. Rule 41(a), ARCP, provides "an action may be dismissed by a plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment." No party has filed an Answer to the Complaint. Therefore, Diversified gives notice of its dismissal of the action, without prejudice, as it relates to H2O.

1                   2.       The Complaint alleges wrongful interference by Johnson Utilities with  
2 Diversified in violation with Arizona law, including, without limitation, interference with the  
3 business relationships and the plant and system of Diversified. Subsequent to the filing of the  
4 Complaint, the Board of Supervisors of Pinal County issued Resolution No.031401-SDWID,  
5 dated March 14, 2001 purportedly forming the Skyline Domestic Water Improvement District  
6 (the "District"), which substantially overlapped the certificated area of Diversified. A copy is  
7 attached hereto as Exhibit A.

8                   3.       Thereafter the Pinal County Board of Supervisors, purportedly acting as  
9 the Board of Directors of the District, authorized the execution of a Water Service, Supply and  
10 Management Agreement, dated July 11, 2001 with Johnson Utilities and Shea Utility Services  
11 Company, Inc. (also controlled by George Johnson). The Agreement is attached hereto as  
12 Exhibit B and purports, for a thirty (30) year term, to authorize Johnson Utilities to construct  
13 facilities and provide water service throughout the District including those portions currently  
14 certificated to Diversified. While Johnson Utilities is subject to the jurisdiction of the  
15 Commission, the District would appear to be beyond the jurisdiction of the Commission.

16                   4.       Diversified is involved in litigating two (2) lawsuits filed in Superior Court,  
17 one against the District and the other one where the District has intervened in an effort to defeat  
18 Diversified's effort to secure, through condemnation, a much needed second well. In both  
19 actions, Johnson Utilities has played a significant role, but has used the District as a front in an  
20 effort to avoid the jurisdiction of the Commission and the statutory restrictions on public service  
21 corporations' intrusions upon the certificated area of Diversified. The outcome of both actions  
22 may impact the allegations in the Complaint against Johnson Utilities.

23                   5.       In Maricopa County Superior Court No. CV2002-003724, Diversified  
24 alleges that the Pinal County Board of Supervisors acted arbitrarily, capriciously and contrary to  
25 law in forming the District and seeks to invalidate the District and all actions taken in furtherance  
26

1       thereof. Johnson Utilities actively supported the formation of the District, subsequent to the  
2       District's illegal formation. Johnson Utilities, without bid, secured the thirty year Water Service,  
3       Supply and Management Agreement that purports to authorize Johnson Utilities' construction of  
4       water facilities and the provision of water service within Diversified's certificated area. If  
5       Diversified's suit is successful, the District will be declared null and void and the Water Service,  
6       Supply and Management Agreement will have no force and effect. The illusion of a political  
7       subdivision will be pierced and Johnson Utilities will be stripped of the sword it has been  
8       wielding to interfere with Diversified's operations. Competing Motions for Summary Judgment  
9       have been filed and are currently scheduled for argument on July 28, 2003 before Judge Fields.

10               6.       The second lawsuit, Maricopa Superior Court Cause No. CV2002-00245,  
11       was filed by Diversified to condemn a well located within Diversified's certificated area. The  
12       action was commenced to secure for Diversified a much-needed second production well. This is  
13       the same well that Johnson Utilities was restrained from "entering into a Well Purchase  
14       Agreement" and from "entering into a Service Agreement to provide, or otherwise providing  
15       water [therefrom] to provide water service to properties within Diversified Water Utilities, Inc.'s  
16       Certificate of Convenience and Necessity." See, Temporary Order, dated December 1, 2000  
17       entered in the ACC dockets. Yet, after commencement of the condemnation action, Johnson  
18       Utilities, claiming to have acquired ownership of the well, filed an objection to Diversified's  
19       acquisition. Subsequently, Johnson Utilities withdrew and the District, claiming to have acquired  
20       the well, filed to intervene on the basis that it had acquired the well. The well is not located  
21       within the District, but is located solely within Diversified's certificated area. This action is  
22       awaiting a ruling on the District's Motion to Consolidate the two actions. The issue of  
23       consolidation is to be heard August 8, 2003 before Judge Fields.

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1                   7.       Diversified stands ready, willing and able to provide water service to the  
2 areas within its certificated area and to expand its service territory to serve any uncertificated area  
3 located within the boundary of the illegally formed District.

4                   8.       Diversified has expended a great amount of time, effort and money in  
5 combating the illegal formation of the District and to secure a second well to enhance service to  
6 its customers, despite the interference of Johnson Utilities, through the artifice of the District.  
7 Diversified intends to continue to do so, while preserving the present action docketed at the  
8 Commission.

9                   WHEREFORE, Diversified Water Utilities, Inc. gives notice of the dismissal,  
10 without prejudice of its complaint against H2O, Inc. and respectfully requests the Arizona  
11 Corporation Commission to continue this Complaint as against Johnson Utilities, L.L.C., dba  
12 Johnson Utilities Company in abeyance.

13                   Respectfully submitted this 16th day of July, 2003.

14                   MARTINEZ & CURTIS, P.C.

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22                   Attorneys for Diversified Water Utilities, Inc.  
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**PROOF OF SERVICE AND  
CERTIFICATE OF MAILING**

I hereby certify that on this 16th day of July, 2003, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and seventeen (17) copies of said document to:

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

With copies of the foregoing mailed and/or hand-delivered this 16th day of July, 2003 to:

Marc E. Stern, Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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1620 pleadings/motion to dismiss H2O wo prejudice.0715.03