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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

DOCKETED BY

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

DOCKET NOS. W-02234-A-00-0775
WS-02987A-00-0775
W-02859A-00-0775
FIRST AMENDED
COMPLAINT

Diversified Water Utilities, Inc. ("Diversified") files its First Amended Complaint against Johnson Utilities L.L.C. dba Johnson Utilities Company ("Johnson Utilities") and H2O, Inc. ("H2O") pursuant to A.R.S. §§ 40-202, 40-203, 40-246, 40-281, A.A.C. R14-3-101A, and Rule 65 of the Arizona Rules of Civil Procedure and in support thereof alleges as follows:

1. Diversified is an Arizona corporation certificated by this Commission to provide domestic water service in sections 27, 34 and 35 T2S, R8E, and Sections 2, 3, 4, 9, 10, 11 and 12, T3S, R8E, Pinal County, Arizona.

2. In furtherance of the public interest and in the performance of its obligations as a public service corporation, Diversified has constructed and is constructing lines, plant and system to render water service and is ready, willing and able to serve customers, in accordance with the rules and regulations of the Arizona Corporation Commission ("Commission"), in areas both within and in the vicinity of its certificated area.

3. Johnson Utilities and/or H2O have filed requests to extend their Certificates of Convenience and Necessity to areas either within, contiguous to or in the vicinity of the areas certificated to Diversified including, without limitation, Sections 28, 29, 31, 32, 33

1 and 34, T2S, R8E and Sections 13, 14, 15 and 16, T3S, R8E, Pinal County, Arizona as more
2 fully set forth in Dockets WS-02987A-99-0583, WS-02987A-00-0618, and W-02234A-00-0371.

3 4. Diversified, as an alternative water provider in the area, is ready, willing
4 and able to provide water service to the areas into which Johnson Utilities and H2O seek to
5 extend their certificates and Diversified has filed an application with the Commission to extend
6 its Certificate of Convenience and Necessity.

7 5. Diversified acquired the utility system and has made sufficient
8 investments therein, and continues to make sufficient investments therein as necessary to enable
9 it to provide reliable water service to its existing and future customers.

10 6. The applications to extend their Certificates of Convenience and Necessity
11 filed by Johnson Utilities and H2O threaten to interfere with the operations of the line, plant and
12 system of Diversified in violation of A.R.S. § 40-281.B. For example, and without limiting the
13 nature of the interference, the certificates, if granted, would preclude Diversified from
14 developing a properly looped system; would preclude Diversified from minimizing the cost of
15 providing water service; and would interfere with Diversified's ability to develop an
16 economically viable water system.

17 7. Johnson Utilities has taken actions over the past two months intentionally
18 calculated to interfere with and actually interfering with Diversified's operation of its line, plant
19 and system, Diversified's contractual relationships and/or business expectancies, and
20 Diversified's monopoly rights including, without limitation (i) interfering with a loan application
21 pending with the Water Infrastructure Financing Authority ("WIFA") (a loan requested to install
22 a needed second well and provide additional storage), (ii) soliciting landowners and prospective
23 developers of land within Diversified's certificated area by offering to provide water service and
24 encouraging the owners and prospective developers to oppose conveyance of a well and wellsite
25 to Diversified and to have their land decertified, and (iii) attempting to extend its facilities to
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1 serve within Diversified's existing certificated area including, without limitation, offering to
2 purchase a well and wellsite committed to Diversified at the location set forth on Exhibit A,
3 attached hereto and incorporated by this reference, which location is a mile within Diversified's
4 certificated area and more than four miles from any area currently certificated to Johnson
5 Utilities, and offering to provide water service to approximately 960 acres within Diversified's
6 certificated area, as evidenced by Exhibit B, attached hereto and incorporated herein by this
7 reference.

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9 8. In order to fulfill its obligation to Diversified and the customers served by
10 Diversified and to protect Diversified's constitutionality protected property rights embodied by
11 the grant of a Certificate of Convenience and Necessity, the Commission, pursuant to A.R.S. §§
12 40-202, 40-203, 40-246, 40-281, A.A.C. R14-3-101A, and Rule 65 of the Arizona Rules of Civil
13 Procedure, must enter such orders as may be necessary to prohibit Johnson Utilities and H2O
14 from interfering with the lines, plant and system of Diversified and from interfering with
15 Diversified's contractual relationship and/or business expectancies including, without limitation,
16 denying the pending applications of Johnson Utilities and H2O to extend their respective
17 certificated areas into the sections set forth in Paragraph 3 hereof.

18 9. The actions of Johnson Utilities, as specified in Paragraph 7 hereof
19 threaten to cause immediate irreparable injury, loss and damage to Diversified and Diversified's
20 customers, to wit the alienation of property owners within Diversified's certificated area, the loss
21 of a well and wellsite, infringement upon Diversified's certificated area by another public service
22 corporation and the risk of financing that is critical to Diversified all of which are
23 uncompensable after the fact, all as set forth in the Application for an Order Without Notice to
24 Preserve Status Quo, filed simultaneously herewith and incorporated herein by this reference.

25 10. The names, mailing addresses and telephone numbers of the persons upon
26 whom service of all documents is to be made are:

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William P. Sullivan, Esq.
Martinez & Curtis, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090
(602) 248-0372

AND

Diversified Water Utilities, Inc.
Post Office Box 17357
Phoenix, Arizona 85011
(602) 840-9400

WHEREFORE, Diversified Water Utilities, Inc. requests the Arizona Corporation Commission:

1. Enter an Order Without Notice to Preserve the Status Quo temporarily restraining Johnson Utilities L.L.C. dba Johnson Utilities Company, its officers, directors, employees, agents, servants and any and all other persons in active concert or participation with them from:

A. Interfering with Diversified Water Utilities, Inc.'s application for financing with the Water Infrastructure Financing Authority ("WIFA");

B. Extending its facilities or service into the area encompassed by Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described on Exhibit A, attached hereto which wellsite is located within the certificated area of Diversified Water Utilities, Inc., is several miles away from the area currently certificated to or served by Johnson Utilities L.L.C. dba Johnson Utilities Company and had previously been committed to Diversified Water Utilities, Inc. and (ii) entering into a Service Agreement to provide water service to properties within Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

C. Contacting landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated area for the purpose of offering water service

1 and/or encouraging said landowners or prospective landowners from seeking deletions from
2 Diversified Water Utilities, Inc.'s certificated area, or otherwise filing complaints regarding
3 Diversified Water Utilities, Inc.'s service;

4 2. Enter an Order for Johnson Utilities L.L.C. dba Johnson Utilities
5 Company to appear and show cause why the Order Preserving the Status Quo should not remain
6 in effect until a final determination is made on Diversified's First Amended Complaint;

7 3. Give notice of this Complaint to Johnson Utilities L.L.C. dba Johnson
8 Utilities Company and H2O, Inc.;

9 4. After the show cause hearing, maintain the Order to Preserve the Status
10 Quo in full force and effect pending a final determination of Diversified Water Utilities, Inc.'s
11 First Amended Complaint;

12 5. Consolidate this matter with Dockets WS-02987A-99-0583, WS-02987A-
13 00-0618, and W-02234A-00-0371;

14 6. Set this matter for hearing;

15 7. Enter such orders as may be necessary to halt the actual and potential
16 interference by Johnson Utilities L.L.C. dba Johnson Utilities Company and/or H2O, Inc. with
17 Diversified Water Utilities, Inc.'s lines, plant and system including, without limitation:

18 A. Denying the applications to extend the Certificates of Convenience
19 and Necessity of Johnson Utilities L.L.C. dba Johnson Utilities Company and H2O, Inc.
20 currently pending with the Commission; and

21 B. Permanently restraining Johnson Utilities L.L.C. dba Johnson
22 Utilities Company, its officers, directors, employees, agents, servants and any and all other
23 persons in active concert or participation with them from:

24 i. Interfering with Diversified Water Utilities, Inc.'s
25 application for financing with the Water Infrastructure Financing Authority ("WIFA");
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ii. Extending its facilities or service into the area encompassed by Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described on Exhibit A, attached hereto which wellsite is located within the certificated area of Diversified Water Utilities, Inc., is several miles away from the area currently certificated to or served by Johnson Utilities L.L.C. dba Johnson Utilities Company and had previously been committed to Diversified Water Utilities, Inc. and (ii) entering into a Service Agreement to provide, or otherwise providing, water service to properties within Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

iii. Contacting, speaking to, discussing and/or negotiating with landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated area for the purpose of offering water service and/or encouraging said landowners or prospective landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service; and

8. Grant such further relief and the Commission deems just and necessary.

Respectfully submitted this 1st day of December, 2000.

MARTINEZ & CURTIS, P.C.

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

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**PROOF OF SERVICE AND
CERTIFICATE OF MAILING**

I hereby certify that on this 1st day of December, 2000, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

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

With copies of the foregoing
mailed/delivered this 1st day
of December, 2000 to:

Karen E. Nally
Assistant Chief Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Lyn Farmer, Chief Counsel
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Deborah R. Scott
Utilities Division Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Thomas H. Campbell
Gregory Y. Harris
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004
Attorneys for Johnson Utilities L.L.C. dba
Johnson Utilities Company

Richard L. Sallquist
Sallquist & Drummond
2525 E. Biltmore Circle, Suite 117
Phoenix, Arizona 85016

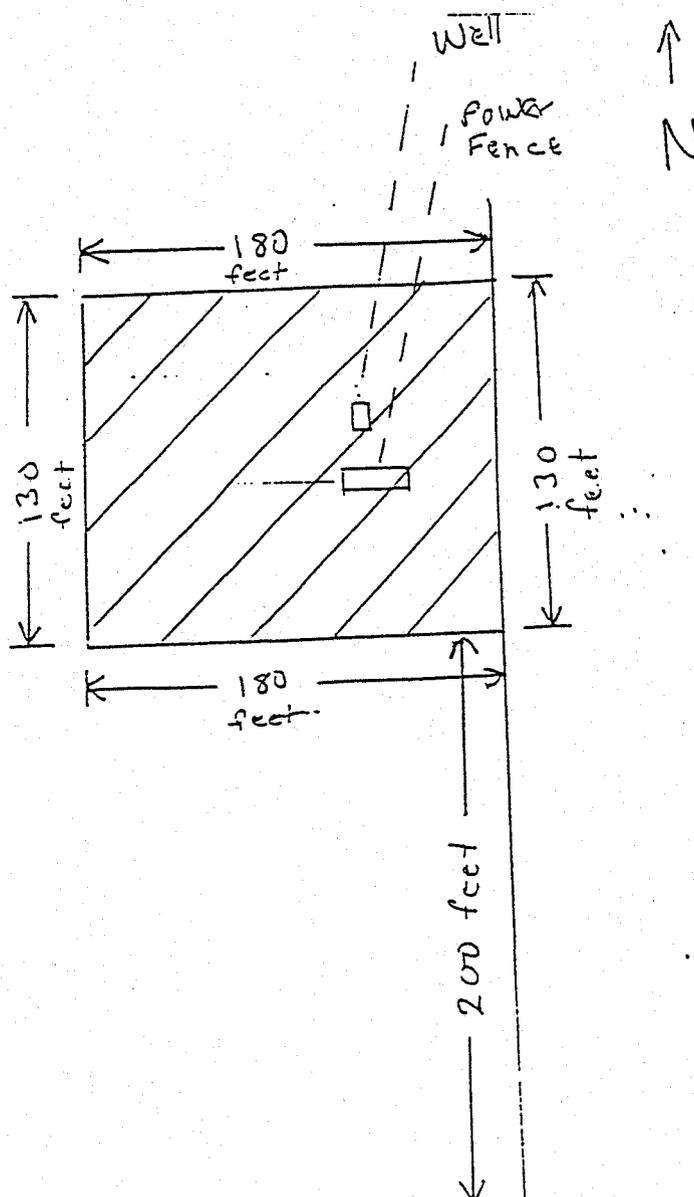
Jay Shapiro
Norman D. James
Karen E. Errant
Fennemore Craig
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for H20, Inc.


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EXHIBIT A

PARCEL A

The cross-hatched portion of the East half of the Northeast quarter of the Northeast quarter of Section 34, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona consisting of approximately .537 acres which includes an existing well, depicted (not to scale) as follows:



Southeast Corner of Section 34, T2S, R8E.

EXHIBIT B

SERVICE AGREEMENT

THIS AGREEMENT dated this ____ day of November, 2000, between Johnson Utilities Company LLC, dba Johnson Utilities Company (hereinafter "Johnson") and Russell E. Brandt, Rebecca Hope Brandt, and Mark A. and Pamela J. Szezepaniec, husband and wife, (hereinafter "Brandt") regarding provision of wholesale water service and certain wastewater services to the hereinafter described properties.

RECITALS

WHEREAS, Brandt owns certain undeveloped real property which will ultimately be subdivided into residential developments (hereinafter the "Property") more fully described in Exhibit A hereto, and

WHEREAS, Johnson owns and operates a water and wastewater public service corporation in Pinal County, Arizona, and

WHEREAS, the Parties have entered into a Purchase Agreement, dated November 15, 2000, pursuant to which Johnson acquired Brandt's water well (the "Subject Well") for public utility purposes, and

WHEREAS, Brandt will need to provide a water source to the ultimate Utility Provider (as hereinafter described) to the Property capable of serving the Property, and

WHEREAS, the Brandt is of the opinion that it will be beneficial to the Property if other property in the vicinity of the Property as more fully described in Exhibit B hereto (hereinafter the "Other Property") had back-up water service from the Subject Well under wholesale service between Johnson and the Other Properties' water provider, and

WHEREAS, Johnson is willing to assist in that regard by providing wholesale water service and certain wastewater service to the Utility Provider for the Property and the water provider for the Other Property as contemplated in this Agreement.

NOW, THEREFORE, is mutually coveted and agreed by between the parties hereto as follows:

1. Johnson will develop the Subject Well and related equipment to provide domestic and fire flow service for Johnson's customers, plus any requirements for the approximate ____ acres herein described as the Property. The development and improvement of the Subject Well and related facilities, including a storage tank, shall be at Johnson's expense.

2. Brandt shall arrange for a Utility Provider to serve the Property, which Utility Provider may be a public service corporation, a cooperative, a homeowners association, an improvement district, or a municipality, as determined by Brandt.

3. Upon at least 90 days written notice to Johnson of Brandt's need for water service to the Property, or such other notice as agreed upon by the parties, Johnson shall enter into a wholesale water agreement with the Utility Provider for the Property. Such agreement shall be based upon Johnson's cost of service and shall include appropriate capital costs, operating expenses and a return on all investment, and if applicable, under such rates, charges, terms and conditions as approved by the Arizona Corporation Commission (the "ACC").

4. Johnson agrees to provide back-up wholesale water service to the water provider for the Other Property (comprising approximately 2,240 acres), if such provider is authorized to provide that service by the ACC. Back-up wholesale service would be provided only to augment the water provider's service to the Other Property, not as the primary source of supply for the water provider. Johnson will not offer backup service for the certificated area of the water provider outside of the Other Property. Johnson shall have no obligation to provide water to the Other Property from other than the Subject Well. The wholesale service will be provided based upon a facilities agreement, if necessary, under which the water provider would construct any required additional plant, and under wholesale rates of Johnson as authorized by the ACC.

5. The subject wholesale water service shall be provided subject to all applicable requirements, rules, and regulations of the Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR"), and Pinal County.

6. It is understood and agreed by the parties that in the event water or wastewater service is provided to customers on the Property by a Utility Provider other than Johnson, or on the Other Property by another water provider, then and in either of those events, Brandt, the actual Utility Provider, and/or the Other Property water provider shall be responsible for the all necessary water withdrawal authority, Assured Water Supply requirements, usage and conservation reports, and all other requirements as determined by ADWR, ADEQ, or the ACC.

7. Upon at least 90 days written notice, or such other time as agreed upon by the parties, Johnson shall enter into a wholesale wastewater treatment agreement with Utility Provider, or alternatively apply to the ACC for authority to provide wastewater service to the Property and shall provide that service pursuant to ACC approved rates, charges, terms and conditions, and subject to all ADEQ and Pinal County requirements, rules and regulations.

8. Brandt shall be responsible for the construction of all necessary water and/or wastewater transmission, distribution and/or collection main and facilities from the then-existing location of Johnson's facilities to the property line of the Property, or the agreed upon interconnection point with the Utility Provider (the "Off-Site Facilities"), which

facilities shall become the property of Johnson, provided, however, Johnson will construct a water transmission main not to exceed 500 feet in the length between the Subject Well and the Property. Brandt or the Other Property water provider, as appropriate, will fund any other Off-Site Facilities under a non-refundable agreement or ACC approved Tariffs.

9. All on-site facilities necessary to provide water or wastewater service to the Property will be funded directly by Brandt or under authorized charges of the Utility Provider.

10. Johnson shall provide maintenance and operation of the Off-Site Facilities necessary to provide service under this Agreement. Brandt or the Utility Provider shall provide maintenance and operation of the on-site facilities necessary to provide service under this Agreement.

11. The terms of this Agreement shall be construed in accordance with and governed by the laws of the State of Arizona.

12. In the event of litigation involving this Agreement, the unsuccessful party shall pay to the prevailing party all costs of suit, including reasonable attorneys fees. No party shall be entitled to preference in interpretation this Agreement. Each party has had the opportunity to have this Agreement reviewed by counsel and has either done so or waived the right to do so.

13. This Agreement contains the entire Agreement of the parties hereto with respect to the matters covered hereby and supersedes all prior arrangements and understanding between the parties, and no other agreement, statement or promise made by either party hereto which is not contained herein shall be binding or valid.

14. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

15. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited, such provision shall be ineffective only to the extent of such prohibition or invalidation, and shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

16. All notices, requests, demands and communications hereunder shall be deemed to have been duly given if delivered by hand or mailed, certified or registered mail with postage prepaid, return receipt requested, addressed as follows:

To: Johnson Utilities Company
George H. Johnson
5230 East Shea Boulevard, Suite 200
Scottsdale, Arizona 85254

To: Russell E. Brandt

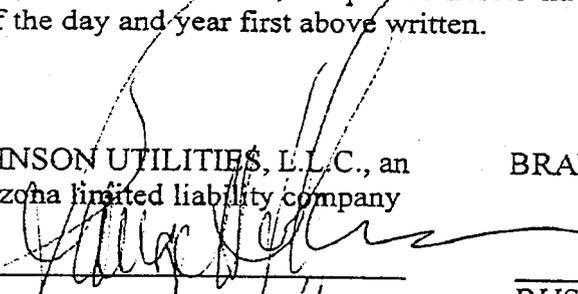
Any party from time to time may change such address by written notice by certified or registered mail to the other.

17. This Agreement shall become effective on the date of the closing on the Subject Well under the above referenced Purchase Agreement. In the event that purchase does not close, this Agreement shall be null and void.

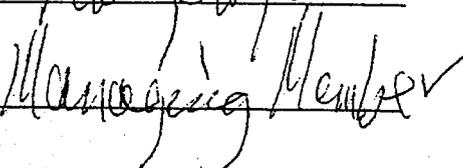
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

JOHNSON UTILITIES, L.L.C., an
Arizona limited liability company

BRANDT

By: 

RUSSELL E. BRANDT

Its: 

REBECCA HOPE BRANDT

MARK A. SZEZEPANIEC

PAMELA J. SZEZEPANIEC