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ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF H2O, INC., FOR AN EXTENSION
OF ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY

Docket No: W -02234A-00-0371

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. DBA
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION FOR ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA

Docket No: WS-02987A-99-0583

Docket No: WS-02987A-00-0618

**PREFILED REBUTTAL TESTIMONY
OF STANLEY D. GRIFFIS**

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1 **Q:** Please state your name, employer and tenure with your current
2 employer.

3 **A:** Stanley D. Griffis, Ph.D. County Manager, Pinal County, Arizona, 1989 to
4 present.

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6 **Q:** Please state your educational background.

7 **A:** • Ph.D.: St. Louis University
Major: Management Science
8 Minor: Organizational Psychology

9 • MBA: Michigan State University
Major: Accounting
10 Minor: Economics and Statistics

11 • BBA: Oklahoma University
Major: Accounting
12 Minor: Economics and Statistics

13 **Q:** Are you familiar with Johnson Utilities?

14 **A:** Yes.

15 **Q:** How have you become familiar with Johnson Utilities?

16 **A:** In connection with my position as Pinal County Manager, I have become
17 familiar with Johnson Utilities, George Johnson, and the development
18 projects Mr. Johnson and his companies have built or developed in Pinal
19 County and other locations in Arizona.
20

21 **Q:** Have you had the opportunity to review the application filed by Johnson
22 Utilities to expand its certificate of convenience and necessity to serve
23 water and wastewater in Pinal County that is the subject of this
24 proceeding?
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26 **A:** Yes.

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Q: As a part of the CC&N expansion application process, are you are aware if Mr. Johnson has sought to expand the scope of the franchise it holds to provide water and waste water services in Pinal County?

A: Yes.

Q: Does Mr. Johnson have a franchise to serve customers in Pinal County?

A: Yes, he does. On August 2, 2000, the Pinal County Board of Supervisors approved the application filed by Johnson Utilities to expand the franchise area within which Johnson Utilities may provide water and waste water services in Pinal County.

Q: Please identify the projects or developments undertaken by George Johnson and Johnson Utilities.

A: Mr. Johnson and the companies he operates have constructed or developed a number of projects or developments in Pinal County, including Johnson Ranch; Mystic Ranch; his purchase of the water system in Sun Valley Farms Unit 5; the Johnson Ranch Waste Water System, the Johnson Ranch Elementary School, which is part of the Florence School District; the paving and improvement of Hunt Highway; the contributions Mr. Johnson made to the extension and paving of Ironwood Road, south of Combs School Road,

1 to the Hunt Highway; and the installation of a cable television system in
2 Pinal County.

3 **Q: What responsibilities have you fulfilled on behalf of Pinal County in**
4 **connection with these projects?**

5
6 **A:** My responsibilities as Pinal County Manager require me directly, and
7 through my staff, to research and analyze the capability of any developer to
8 undertake and complete development projects that require approval from
9 departments of the County or the Pinal County Board of Supervisors. I have
10 personally reviewed development plans, and when necessary, financial
11 statements, to assess the merits of those plans as well as the financial
12 strength of Mr. Johnson and the companies he operates, including Johnson
13 Utilities.
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17 **Q: In connection with your discharge of your responsibilities, have you**
18 **been called upon to assess the capability of George Johnson and**
19 **Johnson Utilities to fulfill the obligations associated with the projects**
20 **proposed for development and construction in Pinal County?**

21
22
23 **A:** Yes, I have. I have reviewed and analyzed CPA audited and signed financial
24 statements, both personal and corporate, for George Johnson, and the
25 companies that he operates. Beyond this, when George Johnson first sought
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1 zoning approval from Pinal County, I instructed that a background check be
2 run to evaluate his fitness to do business with Pinal County. Significantly,
3 the background check also provided information concerning Mr. Johnson's
4 success in his dealings with other counties, mainly Pima and Maricopa
5 County. Based upon this background check, I learned that Mr. Johnson
6 routinely receives high marks from everyone with whom I spoke.
7
8

9
10 **Q: What have you concluded?**

11 **A:** In every instance in which Mr. Johnson and Johnson Utilities has sought
12 approvals from Pinal County, he and his companies have met or exceeded
13 the obligations owed to Pinal County and to the residents of Pinal County.
14 From my perspective as Pinal County Manager, the financial position of Mr.
15 Johnson and Johnson Utilities is very strong. Further, he has the financial
16 capability to provide quality water and wastewater services to the areas in
17 question.
18

19
20 **Q: Are you aware that Mr. Johnson and Johnson Utilities have been cited**
21 **for violations of State law by the Arizona Department of Environmental**
22 **Quality in connection with development projects in Pinal County?**

23
24 **A:** Yes.
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1 **Q: In view of these citations, what is your conclusion about the fitness of**
2 **Johnson Utilities to serve a greater number of residents and businesses**
3 **in Pinal County?**

4
5 **A:** It is my opinion that Johnson Utilities possesses the experience, skill,
6 expertise, and financial strength to meet the needs of residences and
7 businesses of Pinal County. The notices of violation issued to Johnson
8 Utilities have been brought to my attention. I have reviewed the notices,
9 investigated their significance, and communicated with officials of ADEQ to
10 gather additional information about these notices, including their resolution.
11 From these contacts with ADEQ, I understand that all of the issues have
12 been resolved and that Johnson Utilities is in compliance. Thus, I have
13 concluded, and have reported to the Board of Supervisors, that Johnson
14 Utilities possesses the qualifications to undertake the projects presented to
15 and approved by the County.

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19 **Q: What significance do you attach to the effort of Johnson Utilities to**
20 **provide both water and waste water services to residents and businesses**
21 **in Pinal County?**

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24 **A:** Johnson Utilities and the development projects to be undertaken by George
25 Johnson and the companies he operates represent a significant and
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1 fundamental aspect of the future growth of Pinal County. This is true for
2 several reasons.

3
4 First, as Pinal County continues to grow, the foundation upon which the
5 growth occurs requires a thorough appreciation of the consequences that will
6 flow from that growth. Pinal County can no longer permit projects to be
7 developed that do not include a wastewater treatment plant component for
8 the treatment of water provided by certificated water service utilities. Thus,
9 development plans submitted without long-term wastewater treatment plant
10 served by a certificated wastewater provider will not be approved by the
11 county.
12

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14 Second, rational growth of Pinal County requires that planners and
15 developers have a thorough understanding of the community. George
16 Johnson and Johnson Utilities have been active participants in the rational
17 growth needed to foster the healthy future of Pinal County, in terms of the
18 market, the demands of consumers, the environmental impact of
19 development, and the relationship of that growth relative to Phoenix and
20 Tucson, the two major population centers in Arizona. Affordable housing
21 built to meet demand precipitated by the dramatic growth seen in Arizona is
22 vital to the future of Pinal County. Consumers who choose to live in Pinal
23 County deserve to be served by utilities that possess the facilities, planning,
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1 expertise and financial resources needed to satisfy the laws of the county and
2 state, as well as the legitimate expectations of those who choose to call Pinal
3 County their home. An appreciation of the potential environmental impact
4 of development, as seen in approved plans to recycle, reuse and replenish
5 water resources, is a must. The joint ownership of both the water service
6 and waste water service makes the possibility of the recharge of the aquifer
7 much more feasible, a prospect that will greatly benefit the residents of Pinal
8 County. Thus, the integration of water and wastewater services is vital to
9 ensure the safety and health of the ecosystem for residents today and
10 tomorrow. Moreover, as people choose to live in Pinal County and commute
11 long distances, development must be planned to meet the social needs and
12 income levels of those who choose to call Pinal County home.
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16 Third, the ability to satisfy the obligations imposed by the county is also
17 important. Developers, utilities, and other companies that do business in
18 Pinal County must be prepared to contribute to the community as they reap
19 the benefits available as a result of the choices made by others to live and
20 work in Pinal County. Homeowners, businesses, developers and utilities
21 alike must meet with regulatory and tax obligations imposed or levied by the
22 county.
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1 George Johnson and Johnson Utilities advance Pinal County's goals in all of
2 these respects.

3
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5 **Q: Will Pinal County approve subdivisions and other developments that do**
6 **not have an assured water supply from the Department of Water**
7 **Resources?**

8
9 **A:** No. Without water in the form of an assured water supply, Pinal County will
10 not approve subdivisions or developments within the County. In fact, Pinal
11 County cannot approve subdivisions without an assured water supply.

12
13
14 **Q: Will Pinal County approve subdivisions and other developments that**
15 **are not served by a certificated wastewater utility?**

16 **A:** No. If a project that will contain more than 3 houses per acre will not be
17 served by a certificated waste water system, but will instead rely upon septic
18 tanks, that project will not be approved. Moreover, we understand that some
19 developers may propose the use of package plants. Pinal County does not
20 support the use of package plants because of the extreme risk of nitrate
21 pollution they pose to the aquifer. Package plants produce concentrated
22 levels of nitrates that, in the event of a spill, could cause great harm to our
23 underground water supply.
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Q: Are you familiar with H2O, Inc.?

A: Yes.

Q: How have you become familiar with H2O, Inc.?

A: As above, in connection with my position as Pinal County Manager, I have become familiar with H2O, Inc. and its service of only water as a certificated water service utility in Pinal County.

Q: Have you had the opportunity to review the application filed by H2O to expand its certificate of convenience and necessity to serve water in Pinal County that is the subject of this proceeding?

A: Yes.

Q: As a part of the CC&N expansion application process, are you aware that H2O has sought to expand the scope of the franchise it holds to provide water services in Pinal County?

A: Yes.

1 **Q:** In connection with your discharge of your responsibilities as Pinal
2 County Manager, have you been called upon to assess the capability of
3 H2O to fulfill its obligations to Pinal County?
4

5 **A:** Yes.
6

7 **Q:** What have you concluded?
8

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10 **A:** I do not believe that H2O has the financial strength or commitment to fulfill
11 its future obligations to businesses and residents of Pinal County.
12

13 **Q:** Why have you reached this conclusion?
14

15 **A:** In 1998, as a result of litigation that Pinal County was forced to file against
16 H2O, the county forgave \$162,000.00 in taxes owed by H2O to Pinal
17 County. *Turnbull v. H2O, Inc.*, Pinal County Superior Court Cause No.
18 CV97-044522. H2O received this relief because it demonstrated to Pinal
19 County that it lacked the financial resources to meet the tax obligations that
20 it faced. The county reluctantly accepted the reduction in tax payments from
21 H2O rather than taking over the company as payment for the tax liability. I
22 have attached a copy of the settlement to this statement as Exhibit 1.
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1 **Q:** In view of your experiences and dealings with H2O, what is your
2 conclusion about the fitness of H2O to receive an expanded certificate to
3 serve water to residents and businesses in Pinal County?
4

5 **A:** It is my opinion that H2O should not be granted an expanded certificate of
6 convenience and necessity to serve residents and businesses in Pinal County.
7 I do not believe that H2O possesses the experience, skill, expertise, or
8 financial wherewithal to meet the needs and demands of residents and
9 businesses of Pinal County.
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11
12 **Q:** If developers in the H2O service area seek approval from Pinal County
13 to proceed with the construction with new developments in areas that
14 are not served by a certificated waste water treatment provider, will
15 those developments be approved by Pinal County?
16

17 **A:** No.
18

19
20 **Q:** If the commission permits H2O to extend its certificate to serve water
21 into areas rather than Johnson Utilities to serve water and waste water,
22 what will that mean to developers and property owners seeking
23 development on land covered by the extended H2O certificate?
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1 A: Johnson Utilities has a certificated water supply and will not need to go
2 through the Arizona Department of Water Resources for approval. This
3 process is extremely costly and extremely time consuming.
4

5 H2O does not have an assured water supply. Thus, the process will be much
6 more difficult for those developers and landowners that would be served by
7 H2O because unlike Johnson Utilities, H2O does not have an assured water
8 supply. Moreover, the land covered by the H2O expansion application will
9 not be served by a certificated wastewater treatment provider. Pinal County
10 has grave concerns over the long term impact of septic tanks and package
11 plants on the aquifer that provides the ground water the residents of Pinal
12 County rely upon.
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16 Q: In your judgment what will the approval of H2O's expansion
17 application mean to developments in areas in which Johnson Utilities
18 also seeks extension?
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20 A: Either development will not proceed, or it will proceed at a much slower
21 pace, in the foreseeable future in the absence of a certificated wastewater
22 treatment provider and a water service provider with an assured water
23 supply. In my experience, if developers must await an assured water
24 supply. In my experience, if developers must await an assured water
25 supply, they will forego the development opportunity. Consequently, if H2O gets
26

1 the contested areas at issue in this proceeding, my concern is that the
2 proposed developments will not occur in Pinal County because the
3 developers will instead choose to build elsewhere due to their lack of access
4 to water and the absence of a certificated wastewater treatment provider.
5 Johnson Utilities, which possesses both water and waste water capabilities,
6 and seeks certificates to provide both of these services, would be in the
7 position to provide, in the short term, the resources that Pinal County
8 requires for development to proceed.
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**LEWIS
AND
ROCA**
LLP
LAWYERS

VERIFICATION

1
2 **STATE OF ARIZONA** }
3 County of Maricopa } ss.
4

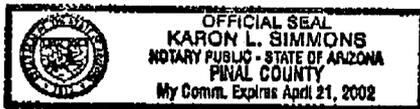
5 Stanley D. Griffis, of lawful age being first duly sworn, deposes and states:

- 6 1. My name is Stanley D. Griffis. I am the County Manager, Pinal County, Arizona.
- 7 2. I hereby swear and affirm that my answers contained in the attached testimony to the
- 8 questions therein propounded are true and correct to the best of my knowledge and belief.

9 DATED this 4th day of October, 2000.

10
11
12 By: 
13 Stanley D. Griffis, Ph.D.
14 County Manager, Pinal County, AZ

15 SUBSCRIBED AND SWORN to before me this 4th day of
16 October, 2000.



17
18 
19 Notary Public

20 My Commission Expires:

21 4-21-02
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Exhibit
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SETTLEMENT AGREEMENT

This Agreement of settlement and compromise (the "Agreement") is made and entered into between Jim Turnbull, in his official capacity as Pinal County Treasurer ("Plaintiff"), and H2O, Inc., an Arizona corporation ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties."

1. RECITALS

- 1.1 On or about March 7, 1997, Plaintiff filed a civil lawsuit naming this Defendant alleging that the Defendant owes real and personal property taxes to the Plaintiff in the amount of \$235,332.40 through December, 1996. The Complaint filed in the Superior Court at Pinal County, State of Arizona, Cause No. CV97-044522, requested judgment in that amount plus interest and costs (the "Pending Lawsuit").
- 1.2 The Defendant cooperated with the Plaintiff in seeking an extension of the time for service, and on July 7, 1997, Defendant filed and served a Motion to Dismiss Or, In the Alternative, Motion for a More Definite Statement. By agreement of the Parties and approval of the Court, time for Response to the Motion has been extended for purposes of engaging in settlement discussions, and the Motion is currently pending.
- 1.3 During the pendency of the lawsuit, the Parties have made reasonable and significant efforts at settlement of the dispute, including attempts by the Defendant to borrow funds from various financial institutions. The Defendant has been completely unsuccessful in such attempts at borrowing funds, the financial status of the Defendant and the existence of the tax delinquency preventing its attempts to borrow.

- 1.4 Defendant has taken the position that during the years for which tax payments are requested under the Pending Lawsuit, the Arizona Corporation Commission set Defendant water utility company's rates at levels that were insufficient to permit payment of various of the Company's expenses, including property taxes. Defendant has further argued that for the years in question, the utility experienced yearly operating losses and net losses of income. The Defendant has also pointed out that it experienced little growth during the years of property taxes at issue, and that reasonable settlement of the lawsuit will permit it to continue as a solvent, operating public utility.
- 1.5 Plaintiff and Defendant wish to settle this dispute in a manner which provides payment of maximum available funds to Pinal County while permitting the continued financial viability of the Defendant water utility company.

2. COVENANTS

The Parties hereby agree as follows:

- 2.1 Upon execution and delivery of this Agreement, which the Parties understand and agree must include and shall be contingent upon the approval of the Board of Supervisors for Pinal County, the Defendant shall pay to the Plaintiff the sum of Seventy-Five Thousand Dollars (\$75,000.00).
- 2.2 In consideration of the payment obligation set forth in paragraph 2.1, Plaintiff agrees to dismiss all claims as against the Defendant in the Pending Lawsuit with prejudice, each party to bear its own attorneys' fees and costs of court incurred. Simultaneous with the completed execution of this Agreement, and Board of Supervisors' approval, the Plaintiff will prepare and forward to Defendant an executed Stipulation to Dismiss and the Order therefor.

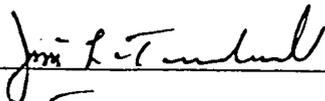
- 2.3 Defendant shall be further required to pay, on or before July 1, 1998, its 1997 Pinal County property tax bill in full.
- 2.4 Defendant shall further be required during 1998 and succeeding years, to impound on a monthly basis, in a separate and segregated federally insured bank account, an amount equal to one-twelfth (1/12) of the prior year's tax bill, so as to ensure that funds are available to meet and pay subsequent years' property tax bills when due. This account shall be set up in such a manner as to permit and provide for direct payment by Defendant's bank of all future property taxes upon that institution's receipt of Pinal County property tax bills. Defendant shall provide the Pinal County Treasurer with all applicable information concerning this account, and shall authorize the bank to release any and all requested information concerning the status of the account to the Pinal County Treasurer or his designee. H2O shall authorize the bank, in writing, to permit the Pinal County Treasurer's Office to debit the account, on a bi-annual basis, for the amount of taxes then due. This procedure would be the same as a "sure-pay" or other automatic debit of account system. In the event because of an increase of taxes, there is insufficient money in the account to cover the current taxes, H2O will before the taxes become delinquent, pay the difference into said account. Additionally the monthly deposit will be increased to the new tax base.
- 2.5 The Parties acknowledge that this Agreement is made as a compromise between the Parties for the complete and final settlement of the Pending Lawsuit, including all claims for delinquent taxes, penalties and interest for years 1996 and earlier, and as such, shall not be used for any purpose other than the resolution of the Pending Lawsuit and the respective interests of the Parties thereto. The Parties specifically

agree that neither the Agreement nor any of its terms shall be used as precedent in any other or future litigation involving real or personal property taxes concerning the Defendant's property.

3. MISCELLANEOUS

- 3.1 This Agreement represents the Parties' entire agreement. There are no representations, understandings or agreements other than those expressed herein. No provision of this Agreement shall be waived or modified except as may be in writing signed by the Parties.
- 3.2 This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of Arizona.
- 3.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one Agreement.
- 3.4 The undersigned execute this Agreement as fully authorized representatives of the respective Parties.

PINAL COUNTY TREASURER

By 
Its Treasurer

Date Signed: 7-7-, 1998

APPROVED AS TO FORM:
ROBERT CARTER OLSON
PINAL COUNTY ATTORNEY

By 
Leonard N. Sowers
Deputy County Attorney
Attorneys for Plaintiff Pinal County Treasurer

H2O, INC.

By *David Sany*
Its *President*

Date Signed: *July 1*, 1998

APPROVED AS TO FORM:
LEPLEY LAW OFFICES, P.C.

By *Stephen C. Lepley*
Stephen C. Lepley
Attorneys for Defendant, H2O, Inc.

PINAL COUNTY
BOARD OF SUPERVISORS

By *Ardie Smith*
Its Chairman

ATTEST: *Sheri Cleff, Dep. Clerk* Date Signed: *July 29*, 1998
Clerk Of The Board Of Supervisors