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5 Phoenix, Arizona 85012
6 Attorneys for Johnson Utilities Company

DOCKETED BY *mac*

BEFORE THE ARIZONA CORPORATION COMMISSION

6 IN THE MATTER OF THE
7 APPLICATION OF H2O, INC. FOR AN
8 EXTENSION OF ITS EXISTING
9 CERTIFICATE OF CONVENIENCE AND
10 NECESSITY

DOCKET NO. W-02234A-00-0371

11 IN THE MATTER OF THE
12 APPLICATION OF JOHNSON
13 UTILITIES, L.L.C. DBA JOHNSON
14 UTILITIES COMPANY FOR AN
15 EXTENSION FOR ITS CERTIFICATE OF
16 CONVENIENCE AND NECESSITY TO
17 PROVIDE WATER AND WASTEWATER
18 SERVICE TO THE PUBLIC IN THE
19 DESCRIBED AREA IN PINAL COUNTY,
20 ARIZONA

DOCKET NO. WS-02987A-99-0583

DOCKET NO. WS-02987A-00-0618

21 IN THE MATTER OF THE
22 APPLICATION OF DIVERSIFIED
23 WATER UTILITIES, INC. TO EXTEND
24 ITS CERTIFICATE OF CONVENIENCE
25 AND NECESSITY

DOCKET NO. W-02859A-00-0774

26 IN THE MATTER OF THE
APPLICATION OF QUEEN CREEK
WATER COMPANY TO EXTEND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY

DOCKET NO. W-01395A-00-0784

APPLICATION FOR RETROACTIVE
EXTENSION OF TIME TO COMPLY WITH
DECISION NO. 64062

Johnson Utilities Company ("JUC") hereby files this Application for a Retroactive Extension of Time to Comply with Decision No. 64062 (the "Application"). This Application is supported by a proposed Consent Judgment between JUC and the Arizona Department of Environmental Quality ("ADEQ"), resolving all outstanding compliance issues between JUC and ADEQ. In support of this Application, JUC states as follows:

1. In Decision No. 64062, dated October 4, 2001, (the "Decision"), the Commission

1 granted JUC's application to extend its certificate of convenience and necessity (CC&N)
2 throughout certain portions of Pinal County.

3 2. As a condition of the Commission's approval, the Decision requires JUC to
4 annually file documentation from ADEQ evidencing the Company's compliance with ADEQ
5 regulations. Decision at ¶ 154. This filing was to be made within 30 days of the anniversary date
6 of the Decision for two consecutive years. Thus, the first compliance deadline was November 4,
7 2002.

8 3. On November 8, 2002, JUC filed a request for a retroactive extension of the 2002
9 compliance deadline, seeking an additional 60 days, or until January 4, 2003. On December 4,
10 2002, the Administrative Law Judge issued a Recommended Opinion and Order on JUC's
11 request, and the matter was scheduled for the Commission's December 17, 2002, Regular Open
12 Meeting.

13 4. On December 13, 2002, the Company filed ADEQ compliance reports as required
14 by the Decision. A November 20, 2002, Compliance Status Report (Sun Valley Farms Unit V
15 System) referred to an unresolved matter concerning a Notice of Violation issued to JUC by
16 ADEQ on October 16, 2001 for an alleged violation of A.A.C. R18-4-507.

17 5. During its December 17, 2002, Regular Open Meeting, the Commission made
18 inquiry about the outstanding Notice of Violation (NOV) and the steps the Company was taking
19 to resolve the issue with ADEQ. Despite considerable discussion, the Commission was not
20 satisfied with JUC's efforts to resolve the dispute with ADEQ over alleged violations of A.A.C.
21 R18-4-507.

22 6. Since that time, JUC and ADEQ have undertaken additional efforts to address
23 ADEQ's allegation that JUC violated A.A.C. R18-4-507. Attached as Exhibit 1 is the proposed
24 Consent Judgment between JUC and ADEQ ("Consent Judgment"), which both parties are
25 prepared to sign, whereby ADEQ and JUC agree to a resolution of the alleged violations. The
26 Consent Judgment clearly illustrates ADEQ's belief that entry of the Consent Judgment without

1 further litigation is the most appropriate means of resolving the matter and furthering the public
2 interest. The Consent Judgment clarifies that no allegations involved a threat to the public's
3 health, safety or welfare.

4 7. The Consent Judgment requires JUC to pay a civil penalty in the amount of
5 \$80,000.00 US Dollars. Although Section V, paragraph B of the draft allows JUC to pay the civil
6 penalty in \$10,000.00 increments for eight consecutive months, JUC intends to remit payment of
7 the whole \$80,000.00 upon execution of the Consent Judgment.¹

8 8. While execution of the Consent Judgment would resolve all outstanding ADEQ
9 compliance issues relating to JUC, JUC nevertheless acknowledges the ongoing compliance
10 requirements of the Decision. See Decision at ¶¶ 153, 154. These include filing with the
11 Commission, by October 4, 2003: 1) a copy of the Company's franchise with Pinal County
12 covering the extension granted in the Decision; 2) copies of all Certificates of Approval to
13 Construct and Certificates of Approval of Construction for development in each parcel to be
14 included in JUC's CC&N by virtue of the Decision; and 3) a request for Certificate review and
15 Staff report determining the extent to which development has commenced.

16 9. JUC further acknowledges the importance of compliance with Commission orders.
17 JUC wishes to assure the Commission it is and will continue to make every reasonable effort to
18 maintain compliance while concurrently ensuring the continued provision of safe and reliable
19 water and wastewater utility service to its customers.

20 Based on the foregoing, JUC respectfully requests that the Commission enter its Order:

21 A. Granting a retroactive extension of the deadline for compliance with Decision No.
22 64062;

23
24
25 _____
26 ¹ This may require a minor modification of the attached Consent Judgment to reflect the one time payment of the
civil penalty.

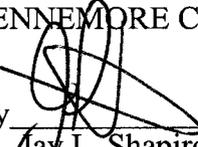
1 B. Granting said extension on the express condition of JUC's resolution of its dispute
2 over compliance by ADEQ by execution of the Consent Judgment and payment in full of agreed
3 upon \$80,000.00 civil penalty no later than seven (7) days following issuance of the
4 Commission's Order;

5 C. Reaffirming that, except as modified herein, Decision No. 64062 remains in effect;
6 and

7 D. For such other relief as is necessary and appropriate under the circumstances
8 herein

9 RESPECTFULLY SUBMITTED this 28th day of March, 2003.

10 FENNEMORE CRAIG, P.C.

11 By 
12 Jay L. Shapiro
13 3003 North Central, Suite 2600
14 Phoenix, Arizona 85012
 Attorneys for Johnson Utilities Company

15 **ORIGINAL AND 21 COPIES** of
16 the foregoing hand-delivered
for filing this 28th day of
March, 2003, to:

17 ARIZONA CORPORATION COMMISSION
18 DOCKET CONTROL
1200 West Washington Street
Phoenix, Arizona 85007

19 **COPIES** of the foregoing
20 hand delivered this 28th
day of March, 2003, to:

21 Marc Spitzer, Chairman
22 Arizona Corporation Commission
1200 West Washington
23 Phoenix, Arizona 85007

24 William A. Mundell, Commissioner
25 Arizona Corporation Commission
1200 West Washington
26 Phoenix, Arizona 85007

- 1 Jim Irvin, Commissioner
Arizona Corporation Commission
2 1200 West Washington
Phoenix, Arizona 85007
- 3 Jeff Hatch-Miller, Commissioner
Arizona Corporation Commission
4 1200 West Washington
Phoenix, Arizona 85007
- 5
6 Mike Gleason, Commissioner
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1200 West Washington
7 Phoenix, Arizona 85007
- 8 Paul Walker
Advisor to Chairman Mark Spitzer
9 Arizona Corporation Commission
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10 Phoenix, Arizona 85007
- 11 Hercules Dellas
Advisor to Commissioner William A. Mundell
12 Arizona Corporation Commission
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- 14 Kevin Barlay
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15 Arizona Corporation Commission
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16 Phoenix, Arizona 85007
- 17 Dean Miller
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- 20 Jodi Jerich
Advisor to Commissioner Mike Gleason
21 Arizona Corporation Commission
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22 Phoenix, Arizona 85007
- 23 Ernest Johnson, Director
Utilities Division
24 Arizona Corporation Commission
1200 West Washington Street
25 Phoenix, Arizona 85007
- 26 Christopher Kempley, Chief Counsel

1 Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007
3 Marc Stern, Hearing Division
Arizona Corporation Commission
4 1200 West Washington Street
Phoenix, Arizona 85007

5
6 **COPIES** of the foregoing
mailed this 28th day
of March, 2003, to:

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12 Phoenix, AZ 85018

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15 Scottsdale, AZ 85251

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Salmon, Lewis & Weldon
17 2850 E. Camelback Road, Suite 200
Phoenix, AZ 85016

18 Kathy Aleman, Manager
19 Wolfcor, LLC & Wolfkin Farms
Southwest Properties, Inc.
20 3850 E. Baseline Road
Suite 123
21 Mesa, AZ 85206

22 Dick Maes, Project Manager
Vistoso Partners
23 1121 W. Warner Rd., Suite 109
Tempe, AZ 85254

24 Donald Schnepf
25 H2O, Inc.
P.O. Box 40340
26 Mesa, Arizona 85274

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By *Linda Fitzgarry*

EXHIBIT 1

1 40 North Central Avenue
Phoenix, Arizona 85004-4429
2 Facsimile (602) 734-3823
Telephone (602) 262-5311

3 James J. Belanger State Bar No. 011393

4 Attorneys for Plaintiff
Johnson Utilities Company, an Arizona
Limited Liability Company

5
6 SUPERIOR COURT OF ARIZONA
7 COUNTY OF MARICOPA

8 STATE OF ARIZONA, ex rel. STEPHEN) No.
9 A. OWENS, Director, Arizona Department)
of Environmental Quality,)
10 Plaintiff,) **CONSENT JUDGMENT**
11 vs.) (Non-classified Civil)
12) (Assigned to the Honorable
13 JOHNSON UTILITIES, L.L.C., an Arizona)
limited liability company,)
14 Defendant.)
15 _____)

16 **I. RECITALS**

17 A. Plaintiff, State of Arizona ex rel. Stephen A. Owens, Director, Arizona
18 Department of Environmental Quality ("ADEQ"), has filed a civil complaint alleging that
19 Defendant Johnson Utilities, L.L.C. violated Title 18, Chapter 4, Articles 1 and 5 of the
20 Arizona Administrative Code ("A.A.C."). The State's claims were brought pursuant to
21 Arizona Revised Statute ("A.R.S.") § 49-354(G) and it seeks the imposition of civil
22 penalties against Defendant.

23 B. Stephen A. Owens is the Director of the Arizona Department of
24 Environmental Quality, and has been duly authorized by the State to enter into this
25 Consent Judgment for and on behalf of the State.
26

1 C. Defendant Johnson Utilities, L.L.C., an Arizona limited liability company, is
2 authorized to and has been conducting business in Arizona.

3 D. On or about January , 2003, Plaintiff filed Civil Complaint No.
4 _____ in the Superior Court of Arizona, County of Maricopa against Defendant (“the
5 Complaint”).

6 There are no allegations herein or in ADEQ’s civil complaint that there was ever a
7 threat to the public’s health, safety or welfare.

8 E. Defendant believes it has legal and factual defenses to the allegations in the
9 Complaint and has indicated that it would vigorously defend any attempt by the Plaintiff to
10 assert claims and seek civil monetary penalties based on those allegations.

11 The foregoing notwithstanding, Defendant recognizes that any litigation would be
12 protracted, and the result of the litigation would be uncertain.

13 F. Defendant acknowledges that it has been provided with a copy of the
14 Complaint in this action and waives service of process.

15 G. Defendant further acknowledges that it has been fully advised of its right to
16 a trial in this matter and has waived the same.

17 H. The parties hereto agree that settlement of the violations alleged in the
18 Complaint is in the best interest of the parties and the public, and that entry of this Consent
19 Judgment without further litigation is the most appropriate means of resolving the
20 allegations contained in the Complaint.

21 I. Defendant admits the jurisdiction of this Court and that venue is proper in
22 Maricopa County.

23 J. Defendant acknowledges that Plaintiff has made no promises of any kind or
24 nature other than that which is set forth in this Consent Judgment, and that Defendant has
25 entered into this Consent Judgment voluntarily after due consideration.
26

VI. MANNER OF PAYMENT

A. All payments made to Plaintiff under this Consent Judgment shall be made by cashier's check or money order payable to ADEQ and shall be hand-delivered or mailed and postmarked, postage prepaid, to:

Michael D. Clark
Chief Financial Officer
Arizona Department of Environmental Quality
ATTN: Accounts Receivable
1110 W. Washington Street
Phoenix, AZ 85007

together with a letter tendering the payment. In the alternative, upon prior notification to Mr. Clark at the above address, the payments may be made by wire transfer to "Arizona Department of Environmental Quality," c/o Bank of America, Account No. 122101706-001-000-985.

B. All letters regarding payment shall identify this case by the names of the parties and the Court docket number. Copies of the letters shall be sent to ADEQ and the Office of the Attorney General at:

Mike Traubert
Arizona Department of Environmental Quality
Water Quality Compliance Section
1110 W. Washington
Phoenix, Arizona 85007

Stephen L. Wetherell
Office of the Attorney General
Environmental Enforcement Section
1275 W. Washington
Phoenix, Arizona 85007

C. Defendant shall pay interest on any amount not paid by the due date at the rate established pursuant to A.R.S. § 44-1201. If Defendant fails to pay the full amount of the Judgment as required by Sections V and VI, at the election of Plaintiff, this Judgment shall become null and void, and Plaintiff may take action to seek civil penalties for any and all violations contained in the Complaint.

VII. RESERVATION OF RIGHTS

1
2 A. Nothing in this Consent Judgment shall constitute a permit or order of any
3 kind, or a modification of any permit or order of any kind, under federal, state or local law.
4 Nothing in this Consent Judgment shall in any way alter, modify or revoke federal, state or
5 local statutes, regulations, rules or requirements. Nor shall this Consent Judgment affect
6 or relieve Defendant in any manner of its obligation to apply for, obtain and comply with
7 all applicable federal, state and local permits and orders, and to comply with all other
8 federal, state and local statutes, regulations, rules and requirements. Compliance with the
9 terms of this Consent Judgment shall be no defense to an action to enforce any such
10 requirement.

11 B. This Consent Judgment does not encompass issues regarding violations,
12 releases, contamination, sources, operations, facilities or processes not expressly set forth
13 in the allegations contained in the Complaint or expressly covered by the terms of this
14 Consent Judgment and is without prejudice to the rights of the State of Arizona arising
15 under any environmental statute, rule or regulation with regard to such issues.

16 C. Plaintiff shall have the right to take enforcement action for any and all
17 violations of environmental laws occurring after the Effective Date.

VIII. RELEASE

18
19 Upon payment of the full amount of the Judgment, including any applicable
20 interest, Defendant, and its past, present, and future directors, officers, members,
21 employees, agents, and successors and assigns, are released from any and all civil liability
22 to Plaintiff for the violations alleged in the Complaint. Defendant releases Plaintiff from
23 any and all claims it might have in relation to the allegations contained in the Complaint.

IX. MODIFICATION

24
25 Except as provided for herein, there shall be no modifications of this Consent
26 Judgment without written approval of each party to this Consent Judgment.

X. TERMINATION

The provisions of this Consent Judgment shall be terminated upon Plaintiff's receipt of the civil penalty, including any applicable interest, pursuant to Sections V and VI.

XI. ATTORNEY'S FEES AND COSTS

Each party shall bear its own costs and attorney's fees in this action, except that as permitted by law, Defendant shall be liable to Plaintiff for any costs or attorney fees incurred by Plaintiff to enforce this Consent Judgment.

XII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction for the purposes of interpreting, implementing, modifying and enforcing the terms and conditions of this Consent Judgment, to resolve disputes arising hereunder and to take any action necessary or appropriate for its construction or execution.

DONE IN OPEN COURT this _____ day of April, 2003.

Maricopa County Superior Court Judge

DEFENDANT'S CONSENT TO JUDGMENT

George Johnson, for and on behalf of Johnson Utilities, L.L.C., hereby acknowledges that he has read the foregoing Consent Judgment in its entirety, agrees with the statements made therein, consents to its entry by the Court, and agrees that Johnson Utilities, L.L.C. shall abide by the same.

DATED this _____ day of April, 2003.

George Johnson
Johnson Utilities, L.L.C.

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PLAINTIFF'S CONSENT TO JUDGMENT

1
2 Karen L. Smith, on behalf of Plaintiff the State of Arizona, hereby acknowledges
3 that she has read the foregoing Consent Judgment in its entirety, agrees with the
4 statements made therein, consents to its entry by the Court and agrees that the State and
5 ADEQ will abide by the same.

6 DATED this _____ day of April, 2003.

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9 Karen L. Smith, Director
10 Water Quality Division
11 Arizona Department of Environmental Quality
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