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**BEFORE THE ARIZONA CORPORATION C**

Arizona Corporation Commission

COMMISSIONERS

**DOCKETED**

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

JAN 20 2011

DOCKETED BY

IN THE MATTER OF THE APPLICATION  
OF DIVERSIFIED WATER UTILITIES, INC.  
TO EXTEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
PINAL COUNTY, ARIZONA.

DOCKET NO. W-02859A-04-0844

DECISION NO. 72093

**ORDER**

Open Meeting  
January 11 and 12, 2011  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On February 28, 2008, the Arizona Corporation Commission ("Commission") issued Decision No. 70181 which granted Diversified Water Utilities, Inc. ("Diversified" or "Company") an extension of its Certificate of Convenience and Necessity ("CC&N"), contingent upon compliance with certain specified conditions.

2. Decision No. 70181 required Diversified to file within two years of the effective date of the Order: a copy of the Arizona Department of Environmental Quality ("ADEQ") Approval to Construct ("ATC") for the water plant facilities needed to serve the first development in the extension area granted; and a copy of the developer's Arizona Department of Water Resources ("ADWR") Certificate of Assured Water Supply ("CAWS") for the first subdivision in the extension area. Decision No. 70181 stated that failure to comply with those two conditions within the required timeframe would render the conditional CC&N "null and void, after due process." (*Id.* at 14.)

3. On January 20, 2010, Diversified filed a Request for Extension to Comply with

1 Decision No. 70181. In its extension request, the Company indicated that at least two additional  
2 years was needed to obtain the required documentation from ADEQ and ADWR due to the slowdown  
3 of development. Diversified claimed that ADWR's CAWS process changed after issuance of  
4 Decision No. 70181, and the Company was required to develop a new hydrologic model for its  
5 certificated area.

6 4. On April 12, 2010, the Commission's Utilities Division ("Staff") filed a Memorandum  
7 stating that the property owners in the extension area, Arizona State Land Department ("ASLD") and  
8 Wolfkin Farms, LLC ("Wolfkin") do not appear to require service from Diversified in the extension  
9 area in the foreseeable future. According to Staff, the project located on ASLD land is not part of  
10 ASLD's five-year plan; and the managers of the Wolfkin property requested that the Diversified  
11 extension to that property be reversed. (April 20, 2010 Staff Memorandum, at 2.)

12 5. On April 13, 2010, Diversified filed a Notice of Withdrawal of Request for Extension  
13 to Comply with Decision No. 70181. The Company stated the compliance filing cannot be satisfied  
14 without the proactive efforts of the property owners/developers within the extension area, and "no  
15 property owner/developer in the extension area has satisfied [Decision No. 70181's] conditions and  
16 none have provided [Diversified] a reliable estimate as to when portable water service will be needed  
17 in the area." (Diversified Withdrawal Request, at 2.)

18 6. On June 11, 2010, Staff filed a Memorandum stating that Diversified is out of  
19 compliance with Decision No. 70181. Staff recommended that the Commission's Hearing Division  
20 issue a Recommended Order finding that, in accordance with the terms of Decision No. 70181, the  
21 CC&N conditionally granted to Diversified be deemed null and void. Staff further recommended that  
22 Docket No. W-02859A-04-0844 be closed upon the effective date of this Decision.

23 7. On July 1, 2010, a Recommended Order was issued recommending that Diversified's  
24 conditional CC&N extension granted in Decision No. 70181 be deemed null and void.

25 8. On July 6, 2010, counsel for Wolfkin filed a letter requesting that a hearing be held as  
26 soon as possible to void the CC&N extension so that it could contract with a different water company  
27 to serve the property.

28 9. On July 12, 2010, Diversified filed a Request to Reinstate its Request for an Extension

1 of Time to Comply with Decision No. 70181. Diversified argued that because Wolfkin indicated it is  
2 actively seeking to develop land in the extension area, there exists a need for service and Diversified  
3 is entitled to be the water provider to the developer.

4 10. On July 12, 2010, Diversified also filed Exceptions to the Recommended Order  
5 arguing that it has at all times been ready, willing and able to serve the extension area subject to  
6 developers pursuing active development of the property.

7 11. On August 13, 2010, Wolfkin filed a letter responding to Diversified's request to  
8 reinstate its extension request. Wolfkin claimed that Diversified was unable to satisfy the conditions  
9 required by Decision No. 70181 despite Diversified's efforts to do so.

10 12. The July 1, 2010 Recommended Order was discussed during the Commission's  
11 August 24, 2010 Open Meeting, but was pulled from the agenda without a vote.

12 13. On December 2, 2010, a Procedural Order was issued directing Diversified to file, by  
13 December 30, 2010, an update regarding the status of this matter.

14 14. On December 30, 2010, Diversified filed a Withdrawal of Objection to Recommended  
15 Opinion and Order.

#### 16 CONCLUSIONS OF LAW

17 1. Diversified is a public service corporation with the meaning of Article XV of the  
18 Arizona Constitution and A.R.S. §§ 40-281 and 40-282 and 40-285.

19 2. The Commission has jurisdiction over Diversified, and the subject matter of this  
20 proceeding, including Diversified's request for an extension of time to comply with Commission  
21 Decision No. 70181.

22 3. It is reasonable and in the public interest to grant the Company's Notice of  
23 Withdrawal of its extension request.

24 4. It is reasonable and in the public interest to adopt Staff's recommendation that  
25 Diversified's conditional CC&N extension be rendered null and void, pursuant to the terms of  
26 Decision No. 70181.

27 5. Docket No. W-02859A-04-0844 shall be closed.  
28

**ORDER**

IT IS THEREFORE ORDERED that Diversified Water Utilities, Inc.'s Notice of Withdrawal of Request for Extension to Comply with Decision No. 70181 is granted, and the CC&N extension conditionally approved by Decision No. 70181 is hereby deemed null and void.

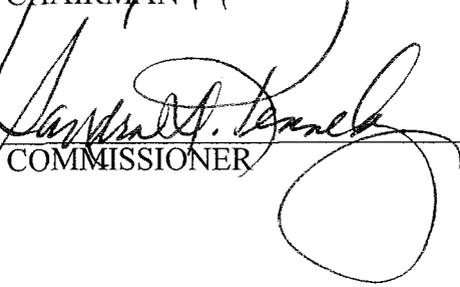
IT IS FURTHER ORDERED that Docket No. W-02859A-04-0844 is hereby closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

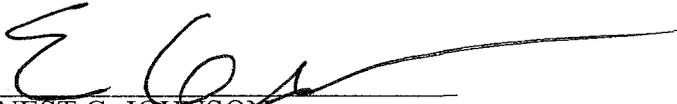
  
COMMISSIONER

  
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IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 19<sup>th</sup> day of January, 2011.

  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: DIVERSIFIED WATER UTILITIES, INC.

2 DOCKET NO.: W-02859A-04-0844

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