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BEFORE THE ARIZONA CORPORATION COMMISSION

2001 AUG 31 1 4 17

1 WILLIAM A. MUNDELL
2 Chairman

AZ CORP COMMISSION
DOCUMENT CONTROL

4 JIM IRVIN
5 Commissioner

6 MARC SPITZER
7 Commissioner

8 PINE WATER COMPANY, an Arizona corporation,)
9 Complainant,)

W-03512A-01-0464

10 vs.)

DOCKET NO. ~~W-03152A-01-0464~~

11 STRAWBERRY HOLLOW DEVELOPMENT,)
12 INC., an Arizona corporation, STRAWBERRY)
13 HOLLOW PROPERTIES, L.L.C., an Arizona)
14 limited liability company, and STRAWBERRY)
15 HOLLOW PROPERTY OWNER'S)
16 ASSOCIATION, INC., an Arizona non-profit)
17 corporation,)

Arizona Corporation Commission

DOCKETED

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18 Respondents.)

REPLY TO PINE WATER COMPANY'S RESPONSE

18 Strawberry Hollow Development, Inc.; Strawberry Hollow Properties, L.L.C.; and
19 Strawberry Hollow Property Owners Association, Inc. (collectively referred to herein as
20 "Respondents") hereby submit their Reply to the Response of Pine Water Company concerning
21 Respondent's Motion to Dismiss dated August 22, 2001. Said Response does not deny that the
22 service of water to the Strawberry Hollow development by the newly formed Strawberry Hollow
23 Domestic Water Improvement District ("District") is outside the Arizona Corporation
24 Commission's ("Commission") jurisdiction nor does it dispute that its original allegations against
25 Respondents are moot in view of the change in circumstances attested to by Mr. Loren Peterson
26

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1 in the Affidavit attached as Exhibit A to Respondent's Motion. Rather Pine Water Company
2 desperately tries to put its Complaint into a state of suspended animation through a series of
3 irrelevant attacks on Respondents' motives, perhaps in the hope that some future event might lead
4 to a cure of its now obvious defects. The Commission should not be a party to these efforts to
5 bleed Respondents' limited resources through yet another legal proceeding. and should promptly
6 dismiss this matter.¹

7
8 **ARGUMENT**

9 Pine Water Company has offered one specious excuse after another for why its Complaint
10 should not be dismissed – none of which address the merits of Respondents' Motion.
11 Respondents will address the two principle "arguments" below.

12 Argument No. 1: *Respondents are "duplicitous" and "disingenuous," and therefore Pine*
13 *Water Company should be permitted to maintain an otherwise moot and meritless complaint*
14 *against them.*

15 Respondents had the temerity to interpose an objection to certain of Pine Water
16 Company's Date Requests.² Although Pine Water Company has not sought to contest this
17 objection, its existence somehow becomes the source of Respondents' so-called duplicity and
18 disingenuousness. Simply put, the District's activities are not relevant or material to any
19 allegation in Pine Water Company's Complaint and neither are Respondents' activities in support
20 of such District. Pine Water Company was obviously using its Complaint before the Commission
21 as a "fishing expedition" to gain information for its litigation in another forum against Gila
22 County and the District. This is not proper discovery, and exercising their right to object to it is
23 hardly evidence of duplicity or disingenuousness on the part of Respondents.

24 ¹ To date, the only party filing legal actions is Pine Water Company, which in addition to prematurely filing this
25 Complaint before so much as a single user was connected to the non-profit homeowners' association water system
26 first envisioned by Respondents, has also filed a Complaint against Gila County and the District and has openly
threatened to resist the District's efforts under law to condemn its naked CC&N for the Strawberry Hollow
development.

² Pine Water Company seeks to quibble over the form of that objection even though the Commission has always
recognized a general objection by a party to a question's relevance as being sufficient to raise Rule 26(b) issues.

1 It is not Respondents that have refused to provide the public with water service while at
2 the same time fighting “tooth and nail” against the efforts of anyone else who wishes to step up
3 and do Pine Water Company’s job. It is not Respondents that cynically maintain that they are
4 ready and willing to provide service when they know they have requested and received a service
5 moratorium from the Commission. Who is being “duplicitous” and “disingenuous” in this
6 matter? Respondents want water. They will take every lawful step to get it. There’s nothing
7 “duplicitous or “disingenuous” about that, and Pine Water Company knows it.

8 *Argument No. 2: Even though Respondents are doing nothing that would make them a*
9 *public service corporation and have stated under oath and without contradiction on the part of*
10 *Pine Water Company that they have no future intent to do so, Pine Water Company should be*
11 *permitted to maintain an otherwise moot and meritless complaint against them because they*
12 *might seek to operate as a public service corporation at some unspecified future date.*

11 Under this theory, any public service corporation in Arizona could file and maintain
12 indefinitely a complaint against anyone because these hypothetical respondents might decide at
13 some future date to act as a public service corporation in violation of the complainant’s certificate
14 rights. It must be remembered that Respondents have done nothing to date except construct
15 certain water facilities – something done by hundreds of developers every year in this state
16 without having to answer to a complaint from the local incumbent utility alleging the crimes of
17 “attempted public service corporation” or “conspiracy to form a public service corporation.”
18 Respondents tried to placate Pine Water Company’s paranoia by making its request for dismissal
19 without prejudice. Apparently Pine Water Company now seeks to extract some manner of
20 legally-binding “pledge” by Respondents that they will never seek to form a non-public service
21 corporation or seek to have their property deleted from Pine Water Company’s certificate no
22 matter how outrageous Pine Water Company’s conduct and no matter how inadequate its service.
23 Respondents will not surrender their rights simply to free themselves of additional litigation by
24 Pine Water Company.

