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BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

DEC 28 2001

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED BY	<i>ml</i>
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PINE WATER COMPANY, an Arizona corporation,
Complainant,

DOCKET NO. W-03512A-01-0464

Vs.

STRAWBERRY HOLLOW DEVELOPMENT,
INC., an Arizona corporation, STRAWBERRY
HOLLOW PROPERTIES, L.L.C., an Arizona
limited liability company, STRAWBERRY
HOLLOW PROPERTY OWNER'S
ASSOCIATION, INC., an Arizona not-for-profit
corporation,
Respondent.

DECISION NO. 64302

ORDER

Open Meeting
December 18 and 19, 2001
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On June 6, 2001, Pine Water Company ("Complainant" or "Pine Water") filed a Complaint with the Arizona Corporation Commission ("Commission") and an Application for an Order to Show Cause why the Respondents, Strawberry Hollow Development, Inc. ("Strawberry Hollow Development"), Strawberry Hollow Properties, LLC, and Strawberry Hollow Property Owners Association, Inc. ("Strawberry Hollow POA"), should not be adjudicated a public service corporation. Due to historical water shortages, Pine Water has operated under various moratoria since the late 1980s with respect to establishing new connections and/or main connections (See, Decision Nos. 56539, 56654, and 59753). Strawberry Hollow Development approached Pine Water for service but Strawberry Hollow was denied service due to the Commission-imposed moratoria.

1 Pine Water alleged that Strawberry Hollow Development, a real estate developer, intended to act as a
2 "water provider" to 41 residential lots on 38 acres through a central distribution system in an area that
3 is certificated to Pine Water, in order to circumvent the water service moratoria.

4 2. On June 28, 2001, the Respondents filed an Answer and Counter-Claim to the
5 Complaint. The Respondents claimed that under the Declaration of Covenants, Conditions, and
6 Restrictions ("CC&Rs") adopted by the Strawberry Hollow POA, each lot owner, acting as co-
7 tenants, would be responsible for the operation, maintenance, repair and replacement of the water
8 system. According to the Respondents, they would not be public service corporations pursuant to
9 Article XV, Section 2, of the Arizona Constitution and, therefore, they claimed the Commission lacks
10 jurisdiction over the subject matter of the Complaint. The Complainant filed a Reply on July 6, 2001.

11 3. On July 25, 2001, a procedural telephonic conference was conducted in this matter.
12 Pursuant to the agreement of the parties and Staff during that conference, a Procedural Order was
13 issued continuing the hearing until September 13 and 14, 2001.

14 4. On August 14, 2001, the Gila County Board of Supervisors approved the formation of
15 the Strawberry Hollow Domestic Water Improvement District ("Improvement District"), which
16 incorporated the entire area of the Strawberry Hollow subdivision.

17 5. On August 22, 2001, Strawberry Hollow filed a Motion to Dismiss the case without
18 prejudice. According to Strawberry Hollow, it has abandoned its plans to provide water service to
19 the Strawberry Hollow subdivision or to anyone else in Arizona. An affidavit signed by the president
20 of Strawberry Hollow Development states that Strawberry Hollow Development has "completely and
21 irrevocably abandoned the intent to have potable water service provided by any of the Respondents to
22 either the Strawberry Hollow subdivision or any other party in Arizona" (Affidavit of Loren Peterson,
23 Exhibit A to Respondents' Motion to Dismiss). Therefore, the Respondent requested that this
24 proceeding be administratively closed since the issues raised by the Complaint are moot.

25 6. On August 27, 2001, Pine Water filed a Response to the Motion to Dismiss. Pine
26 Water argues that, instead of dismissal, the appropriate remedy should be a stay of the proceedings
27 pending resolution of a civil lawsuit Pine Water has filed against Gila County regarding formation of
28 the Improvement District.

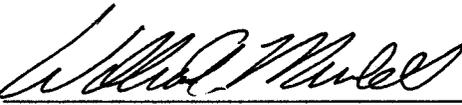
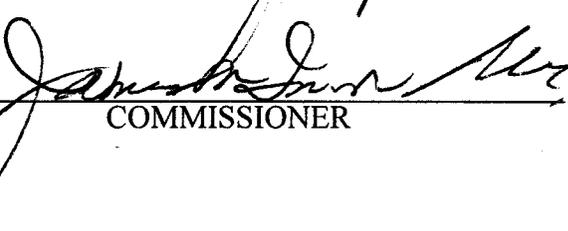
1 efficient and allows the Respondent to re-file the Complaint and pursue the same cause of action in
2 the future.

3 **ORDER**

4 IT IS THEREFORE ORDERED that Pine Water Company's Complaint shall be dismissed
5 without prejudice.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 
10 CHAIRMAN  COMMISSIONER  COMMISSIONER
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 28th day of December, 2001.

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18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

20 DISSENT _____
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SERVICE LIST FOR:

PINE WATER COMPANY V. STRAWBERRY
HOLLOW DEVELOPMENT, INC. ET AL.

DOCKET NO.

W-03512A-01-0464

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: December 4, 2001
DOCKET NOS: W-03512A-01-0464
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

PINE WATER COMPANY v. STRAWBERRY HOLLOW DEVELOPMENT, INC. ET AL.
(ORDER TO SHOW CAUSE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 13, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Special Open Meeting to be held on:

DECEMBER 18 AND 19, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.



BRIAN C. McNEIL
EXECUTIVE SECRETARY