

ORIGINAL NEW APPLICATION
Gliedge Law Offices, P



0000057140

John G. Gliedge

Stephanie J. Gliedge

June 19, 2006

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

W-03512A-06-0407

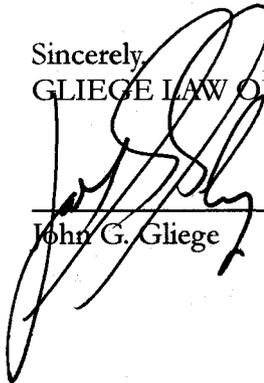
Re: Application for Deletion of Territory
From CC&N of Pine Water Company

Dear Docket Control:

Enclosed please find the original and thirteen (13) copies of the *Application for Deletion of Territory From Certificate of Convenience and Necessity of Pine Water Company* of my clients Raymond R. Pugel and Julie B. Pugel as trustees of The Raymond R. Pugel and Julie B. Pugel Family Trust, and Robert Randall and Sally Randall. The purpose of this application is to delete territory from the CC&N of Pine Water Company. Also enclosed is the *Docket Control Cover Sheet*.

If you have any questions, then please contact this office.

Sincerely,
GLIEGE LAW OFFICES, PLLC



John G. Gliedge

AZ CORP COMMISSION
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2006 JUN 20 P 2: 28

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2006 JUN 20 P 2: 28

5 **John G. Gliege (#003644)**
6 **Stephanie J. Gliege (#022465)**
7 **Attorney for Complainants**

AZ CORP COMMISSION
DOCUMENT CONTROL

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 **RAYMOND R. PUGEL AND JULIE B.**
10 **PUGEL, husband and wife as trustees of THE**
11 **RAYMOND R. PUGEL and JULIE B. PUGEL**
12 **FAMILY TRUST,**

13 **and**

14 **ROBERT RANDALL and SALLY**
15 **RANDALL, husband and wife**

16 **Complainants,**

17 **v.**

18 **PINE WATER COMPANY, an Arizona**
19 **Corporation**

20 **Respondent.**

) DOCKET NO. _____

) APPLICATION FOR DELETION OF
) TERRITORY FROM CERTIFICATE OF
) CONVENIENCE AND NECESSITY OF PINE
) WATER COMPANY

21
22 Comes Now Complainants, RAYMOND R. PUGEL and JULIE B. PUGEL, husband and wife as
23 trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT
24 RANDALL and SALLY RANDALL, husband and wife, by and through their attorney undersigned, the
25 property owners within the Pine Water Company Service Location, and respectfully petition this
26 Honorable Commission, pursuant to *Arizona Revised Statutes §40-252*, to delete from the Certificate of
27 Convenience and Necessity heretofore granted to the Pine Water Company, the territory described
28 below, said territory set forth in Exhibit A, being incorporated herein by reference as if fully set forth. In
29 support of this Application the Complainants alleges:

1 **I. INTRODUCTION AND NATURE OF THE ACTION**

- 2 1. The Complainants, RAYMOND R. PUGEL and JULIE B. PUGEL, husband and wife as
3 trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and
4 ROBERT RANDALL and SALLY RANDALL, husband and wife, are property owners
5 of Parcel 75A and 75B, of Record of Survey recorded October 4, 2000, in Survey Map
6 No. 1966 (that certain parcel of land lying in Section 36, Township 12 North, Range 8
7 East of the Gila and Salt River Base and Meridian), Gila County, Arizona.
- 8 2. The Complainants, RAYMOND R. PUGEL and JULIE B. PUGEL, husband and wife as
9 trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, are
10 property owners of Parcel 19C Record of Survey Map No 2968, Split C Book-Map-Parcel
11 301-19-019, records of Gila County, Arizona.
- 12 3. The Respondent holds a Certificate of Convenience and Necessity issued by the Arizona
13 Corporation Commission which provides the Respondent with the right to provide
14 domestic water service to the property of the Complainants.
- 15 4. At the time of the filing of this action the Respondent is not able to provide satisfactory
16 and adequate water service to the Complainants' property and has denied Complainants'
17 request to do so as stated in the attached letter in Exhibit C.
- 18 5. At this time the Respondent cannot provide any service to the property of the
19 Complainants because of the moratorium on new connections imposed by this Honorable
20 Commission in May, 2005, pg 13, lines 5-6, Docket No. W-03512A-03-0279 Decision
21 No. 67823.
- 22 6. This action is brought to have the property of the Complainants deleted from the
23 Certificate of Convenience and Necessity of the Respondent.

24 **II. THE PARTIES**

- 25 1. The Complainants, property owners, Ray and Julie Pugel of the Pugel Family trust and
26 Robert and Sally Randall, own parcels of property which are located in Gila County,
27 Arizona and within the area included in the Certificate of Convenience and Necessity of
28 the Respondent.
- 29

- 1 2. The Respondent is a public service corporation within the meaning of *Article 15 § 2 of*
2 *the Constitution of the State of Arizona*, doing business in the State of Arizona which
3 holds a Certificate of Convenience and Necessity from the Arizona Corporation
4 Commission to provide water service within the area covered by said certificate which
5 includes the area proposed for deletion herein.

6 **III. BACKGROUND**

- 7 1. The Complainants, property owners, had applied for water service from the Respondent
8 in February, 2005.
- 9 2. The Respondent, at the time of the application up to and including the date of this filing,
10 was not able to provide satisfactory and adequate water service in a reasonable time and
11 at a reasonable rate.
- 12 3. The area within the Certificate of Convenience and Necessity of the Respondent has
13 during the past twenty or more years suffered from chronic water problems and water
14 shortages.
- 15 4. That although the Respondent has made some efforts at improving the water system
16 within the Certificated area, the Respondent is still limited by Orders of the Arizona
17 Corporation Commission from providing the water service requested by the
18 Complainants. See Exhibit B, Arizona Corporation Commission Order on New Service
19 Connection Moratorium (Docket No. W-03512A-03-0279).
- 20 5. Currently the property of the Complainants has located thereon an operating well which is
21 capable of providing domestic water service to the above referenced property.

22 **IV. PINE WATER COMPANY, THOUGH LEGALLY REQUIRED TO DO SO, IS NOT**
23 **ABLE TO REASONABLY PROVIDE ADEQUATE AND SATISFACTORY WATER**
24 **SERVICE AT REASONABLE RATES TO THE COMPLAINANTS**

- 25 1. The Arizona Corporation Commission rules require that the public utility "provide
26 potable water to the customer's point of delivery." *Arizona Administrative Code, Title*
27 *14, Ch. 2, Art. 4, R14-2-407*. The rules list six specific reasons why a utility may refuse
28 to provide service. *Arizona Administrative Code, Title 14, Ch. 2, Art. 4, R14-2-403*.
29 None of the specified reasons apply to the Complainants in this case, therefore the Utility

1 is required to provide service. Nonetheless, Pine Water Company has refused to provide
2 service to the Complainants.

- 3 2. The Arizona Supreme Court has long determined that “a public service corporation is
4 under legal obligation to render adequate service impartially and without discrimination
5 to all members of the general public to whom its scope of operation extends.” *Veach v.*
6 *City of Phoenix*, 102 Ariz. 195, 427 P.2d 335 (1967) citing *Wickenberg v. Town of*
7 *Sabin*, 68 Ariz. 75, 200 P.2d 342 (1948). Such obligation to provide service continues to
8 exist even where the public service provider had determines that the service would be
9 overburdened. *Travaini v. Maricopa County*, 450 P.2d 1021, 9 Ariz. App. 228 (1969).
10 Pine Water Company sites, among other reasons, purported water supply deficiencies in
11 the area as a reason to deny service as well as regulatory action which precludes them
12 from providing service. Relying on *Travaini*, Pine Water Company is required to provide
13 service adequately, impartially and without discrimination. By denying the Complainants
14 service, Pine Water Company has breached its legal obligation as a public service
15 corporation to provide water to all members of the public to whom its scope of operation
16 extends.
- 17 3. That the Pine Water Company, because of the lack of capital facilities and failure to
18 follow commission orders which resulted in this Honorable Commission ordering a
19 moratoria on its development, cannot provide water service to the properties within the
20 above referenced area at this time.
- 21 4. The Pine Water Company has failed to use its resources to develop a water system within
22 the Certificated Area sufficient in size and capability to provide for adequate and
23 satisfactory water service for the Complainants.
- 24 5. The Pine Water Company has a Central Arizona Project (CAP) Water Allocation, but has
25 failed and refuses to develop such CAP Allocation for the benefit of the properties
26 located within the Certificate of Convenience and Necessity.
- 27 6. That the fact that the Respondent is unable to provide water service to the Complainants
28 results in a hardship to the existing and future property owners within the territory to be
29 deleted.

- 1 7. That the Pine Water Company is unable and unwilling to provide adequate water service
2 at reasonable rates to the Complainants.
- 3 8. Without adequate water service, or as it presently is situated, any water service, the
4 Complainants are unable to use their property for any purpose.
- 5 9. That the deletion of the above referenced territory is in the public interest.

6
7 **V. MAINTAINING COMPLAINANTS' PROPERTY WITHIN THE CERTIFICATE OF**
8 **CONVENIENCE AND NECESSITY OF PINE WATER COMPANY CONSTITUTES**
9 **A TAKING OF PRIVATE PROPERTY UNDER COLOR OF LAW CONTRARY TO**
10 **THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AND**
11 **THE CONSTITUTION OF THE STATE OF ARIZONA.**

- 12 1. Pine Water Company also blamed the denial of service to Complainants on regulatory
13 restrictions from the Arizona Corporation Commission, which thus constitutes an action
14 under the color of state law, having the effect of depriving the Complainants of their
15 property in contravention of the Constitution of the State of Arizona and the Constitution
16 of the United States.
- 17 2. That Pine Water Company has completely denied service to the Complainants, leaving
18 Complainants with no economically viable use of their land, constitutes an
19 unconstitutional taking. The U.S. Supreme Court, and the Arizona Supreme Court, have
20 determined that "a governmental regulation that places limitations on land use but does
21 not eliminate all economically beneficial use of the property may nonetheless constitute a
22 taking." *Mutschler v. City of Phoenix*, 129 P.3d 71 (2006) citing *Penn Central*
23 *Transportation Company v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978; see
24 also *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302., 122
25 S. Ct. 1465 (2002).
- 26 3. That the Complainants are damaged by the imposition of such condition upon them in
27 that it deprives the Complainants of their property, without just compensation being first
28 paid to the Complainants.
- 29 4. That Complainants should not bear the burden of Pine Water Company's failure to follow
this Honorable Commission's regulations from which the moratorium resulted.

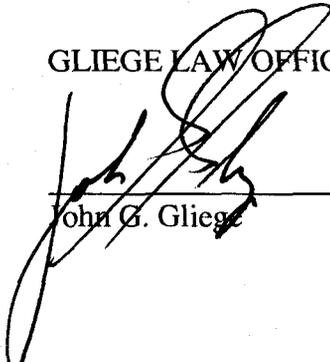
1 **VI. RELIEF SOUGHT**

2 The Complainants pray for relief as follows:

- 3 1. For an Order deleting the territory described in Exhibit A from the Certificate of
4 Convenience and Necessity heretofore granted to the Respondent;
- 5 2. For an Order precluding the property of the Complainants from being taken without
6 compensation first being paid to the Complainants therefore;
- 7 3. For such other and further orders as the Corporation Commission deems necessary and
8 proper under the circumstances.

9 Respectfully submitted this 19 day of June, 2006.

10
11 GLIEGE LAW OFFICES, PLLC

12
13 
14 John G. Gliese

15
16 Original and thirteen copies of the foregoing
17 Mailed this 19 day of June, 2006 to:

18 Docket Control Center
19 Arizona Corporation Commission
20 1200 W. Washington Street
21 Phoenix, AZ 85007

22 Copies of the foregoing
23 Mailed this 19 day of June, 2006 to:

24 Jay L. Shapiro
25 Thomas R. Wilmoth
26 Fennemore Craig
27 3003 North Central Ave. Ste 2600
28 Phoenix, AZ 85012-2913

29 Pine Water Company
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218

EXHIBIT A

Description of Properties

DESCRIPTION OF PROPERTIES

Property owned by Complainants, RAYMOND R. PUGEL and JULIE B. PUGAL, husband and wife as trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST:

Parcel 19C, of Record of Survey recorded in Survey Map No. 2968, Split C Book-Map-Parcel 301-19-019, records of Gila County, Arizona.

Property owned by Complainants, RAYMOND R. PUGEL and JULIE B. PUGAL, husband and wife as trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and SALLY RANDALL, husband and wife:

That certain parcel of land lying in Section 36, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona, more particularly described as follows:

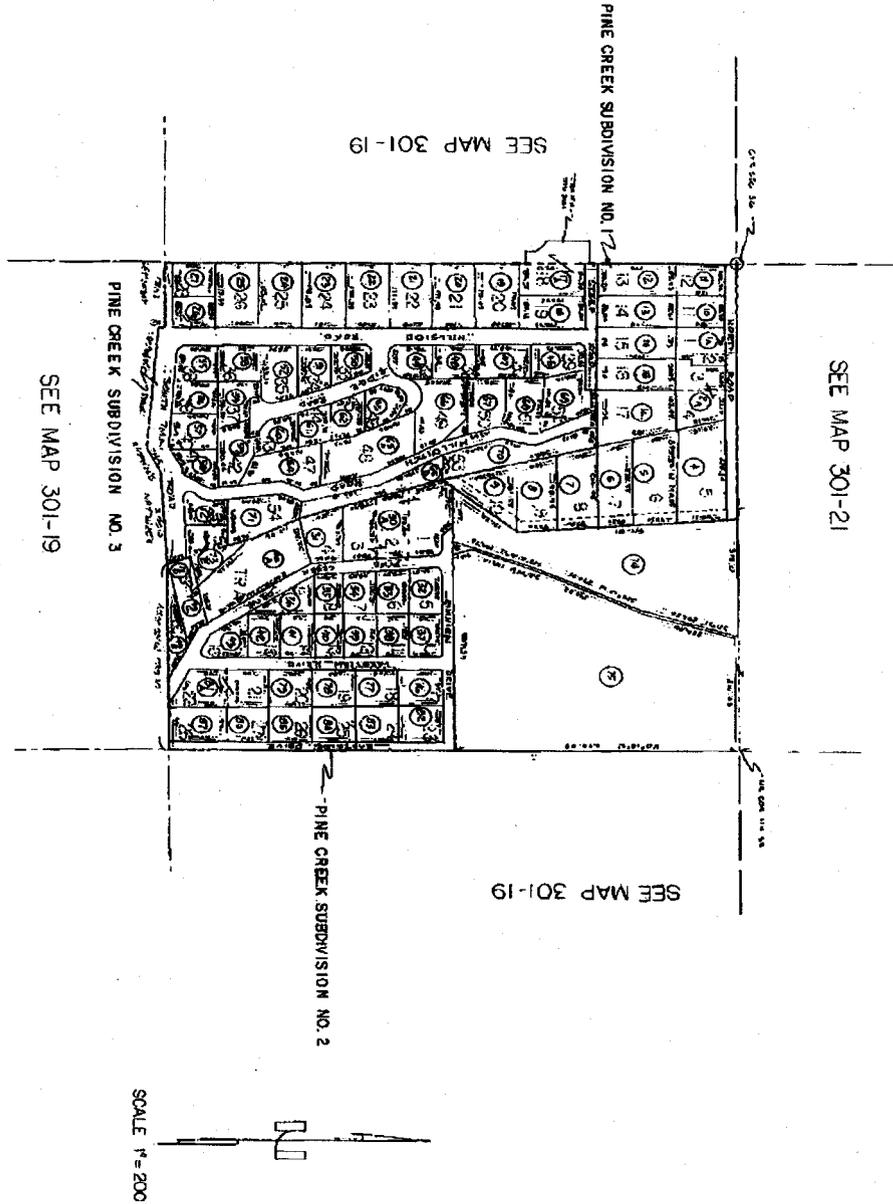
Parcel 75A and 75B, of Record of Survey recorded October 4, 2000, in Survey Map No. 1966.



1 Assessors Parcel Map for the parcel number 301-26-075 was found

Vacant Land or N/A

Map 1 of 1



NW SE SEC 36 T 2 N R 8 E

SEE MAP 301-21

SEE MAP 301-19

SEE MAP 301-19

SEE MAP 301-19

GILA COUNTY ASSESSOR'S MAP

301-26
CODE 1276
UPDATED 12-7-04

Save/View in .TIF format (301-26-075-0700-flm-scn-0200-000)

EXHIBIT B

ACC Order on New Service
Connection Moratorium
(Docket No. W-03512A-03-0279)

COPY

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

MAY 0 5 2005

MAY 0 9 2005

DOCKETED BY

NR

AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY, A RATE INCREASE AND FOR
APPROVAL TO INCUR LONG-TERM DEBT.

DOCKET NO. W-03512A-03-0279

DECISION NO. 67823

SUPPLEMENTAL OPINION AND
ORDER ON NEW SERVICE
CONNECTION MORATORIUM

DATES OF HEARING: January 31, 2005 (Public Comment, Pine, Arizona);
February 14 and 25, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

IN ATTENDANCE: William A. Mundell, Commissioner
Mike Gleason, Commissioner
Kristin K. Mayes, Commissioner

APPEARANCES: Mr. Jay Shapiro, FENNEMORE CRAIG, P.C., on
behalf of Pine Water Company;
Mr. Robert M. Cassaro, in propria persona;
Mr. John O. Breninger, in propria persona; and
Mr. Jason Gellman, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

By Decision No. 67166, (August 10, 2004) the Arizona Corporation Commission
("Commission") granted Pine Water Company ("Pine Water" or "Company") a permanent revenue
increase of approximately 11.8 percent pursuant to a settlement agreement entered into by Pine
Water, the Commission's Utilities Division Staff ("Staff"), and other intervenors¹. Decision No.

¹ The other signatory intervenors were the Strawberry Hollow Domestic Water Improvement District ("District") and Mr. John Breninger. The only other intervenor, Mr. Robert Cassaro, did not sign the settlement agreement. The District withdrew its intervention in this subsequent phase of the proceeding.

1 67166 also directed Staff to prepare a Staff Report within three months addressing the issue of
2 whether a moratorium on new water hook-ups should be reinstated for Pine Water. Pine Water is
3 currently subject to a limited moratorium pursuant to Decision No. 65435 (December 9, 2002),
4 whereby the Company is limited to a maximum of 25 new service connections per month².

5 On November 19, 2004, Staff issued its Staff Report in accordance with Decision No. 67166.
6 Staff recommended that Pine Water be prohibited from connecting any new customers due to Staff's
7 determination that inadequate sources of water are available to serve additional customers. Staff also
8 raised issues with respect to Pine Water's compliance with Arizona Department of Environmental
9 Quality ("ADEQ") regulations.

10 A Procedural Order was issued on November 23, 2004 scheduling a procedural conference for
11 December 1, 2004. The procedural conference was held as scheduled.

12 On December 2, 2004, a Procedural Order was issued scheduling a hearing for February 14,
13 2005, directing the Company to publish notice of the hearing, and establishing other filing dates.

14 Pine Water's president, Robert Hardcastle filed Direct testimony on January 18, 2005.

15 On January 21, 2005, a Procedural Order was issued scheduling a public comment hearing for
16 January 31, 2005 in Pine, Arizona. Pine Water was also directed to notify customers of the public
17 comment hearing by newspaper publication and other means. The public comment hearing was
18 conducted in Pine, as scheduled, on January 31, 2005.

19 On February 1, 2005, Staff engineer Marlin Scott filed Rebuttal testimony in support of
20 Staff's recommendations.

21 On February 8, 2005, Mr. Hardcastle filed Surrebuttal testimony.

22 The evidentiary hearing commenced on February 14, 2005 and continued on February 25,
23 2005.

24 * * * * *

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

27 ² The 25 service connection per month limit was originally established in Decision No. 64400 (January 31, 2002).
28 Decision No. 65435 clarified that the 25 connection per month limit applies to the entirety of Pine Water's certificated service area.

FINDINGS OF FACT

1
2 1. Pine Water provides domestic water utility service to approximately 2,000 customers
3 in the Pine, Arizona area. Pine Water is owned by Brooke Utilities, Inc. ("Brooke Utilities") which,
4 along with its sister company, Brooke Water, LLC, own and operate 26 water systems serving a total
5 of approximately 8,000 customers in Arizona.

6 2. The territory served by Pine Water is subject to water shortages, where ground water
7 is the primary source of water. Groundwater in the Pine area typically flows through scattered rock
8 fractures and is heavily dependent on replenishment from rain and snow melt. As a result, Pine
9 Water's service area is susceptible to shortages in dry years, especially during summer months when
10 demand is highest.

11 3. The Pine Water system and its predecessors have been subject to new service
12 connection limits for a number of years. In 1989, due to historical water shortages in and around the
13 Pine area, the Commission ordered various moratoria on new service connections and main
14 extensions in the area previously served by E&R Water Company, Inc. ("E&R") and Williamson
15 Waterworks, Inc. ("Williamson").

16 4. In Decision No. 56539 (July 12, 1989), the Commission determined that new service
17 connections should be curtailed in E&R's service area due, in part, to a drought in the region and
18 lowering of the water table. In Decision No. 56654 (October 6, 1989), the Commission reaffirmed
19 the moratorium and also prohibited additional main extensions. The Commission directed that the
20 moratorium should remain in place until such time as E&R could demonstrate an ability to increase
21 water supplies by implementing conservation measures and by obtaining additional water resources.

22 5. In Decision No. 57047 (August 22, 1990), the Commission approved a modification to
23 the new service connection limit, allowing ten new connections per month under certain conditions.
24 However, in Decision No. 59753 (July 18, 1996), the Commission revised the moratorium, limiting
25 E&R to one single family residential connection per month on a first come first served basis. The
26 complete moratorium on new main extensions was reaffirmed in that Decision (Decision No. 59753,
27 at 12).

28 6. In August 1996, Brooke Utilities acquired E&R and Williamson and subsequently

1 reorganized seven separate water companies and systems into five subsidiaries, including Pine Water
2 and Strawberry Water Company ("Strawberry"). The reorganization was approved by the
3 Commission in Decision No. 60972 (June 19, 1998). The Pine Water system remained subject to the
4 one connection per month limit and by 2001 the waiting list for new connections had grown to 243
5 customers.

6 7. In September 2001, Pine Water filed an application seeking to increase the new
7 service connection limit to 25 per month. The Commission granted the Company's modification
8 request in Decision No. 64400 (January 31, 2002)³ based on Brooke Utilities' representations that it
9 had made significant improvements to the Pine Water system that would enable the Company to
10 provide adequate water service to new customers. Foremost on the list of improvements was Project
11 Magnolia, a pipeline interconnecting the Pine Water and Strawberry systems that is capable of
12 moving up to 700,000 gallons of water per day. The Company also claimed that water resources had
13 been enhanced as a result of repairs to system infrastructure, drilling of new wells in both Pine and
14 Strawberry, and construction of new storage capacity for both systems. *See*, Decision No. 64400, at
15 3-4.

16 8. As indicated above, in Decision No. 67166 (August 10, 2004) the Commission kept
17 the above-captioned docket open for the purpose of investigating whether a complete moratorium on
18 new service connections should be implemented for the Pine Water system. Staff filed its Staff
19 Report on November 19, 2004 recommending that "no new service connections be added to the Pine
20 Water system at this time" based on Staff's conclusion that insufficient quantities of water are
21 available for Pine Water to adequately serve its customers.

22 9. According to the Staff Report and Mr. Scott's testimony, Staff determined that Pine
23 Water's 19 well production sources are capable of serving a maximum of 555 average water
24 customers, based on Staff's analysis of customer usage from August 2002 to July 2004 (Ex. S-2, at
25 2)⁴. Mr. Scott testified that Staff considered the availability of water from the Strawberry system

26 ³ As amended by Decision No. 65435 (December 9, 2002) for purposes of clarification.

27 ⁴ To reach its conclusion, Staff evaluated the Company's Water Use Data Sheets for the peak month of June 2003
28 (6,400,669 gallons) and divided the usage by 30 days and the actual water users during the month (1,752) to obtain a
result of 121.78 gallons per day ("GPD") per user. This result was multiplied by a factor of 2.0 (due to the lack of peak
day water use data) to determine a value of 243.56 GPD per user, which equated to a value of 0.17 gallons per minute

1 through Project Magnolia, but concluded that Strawberry's 8 wells can produce less than 110 GPM
2 which, at continuous use at half capacity, would quickly be detrimental to water service in
3 Strawberry. Staff considers the Company's only other source of water, hauling water by truck, to be
4 an emergency measure that should not be considered for purposes of determining resource
5 availability (*Id.* at 3).

6 10. Through his testimony, Mr. Hardcastle agrees that Pine Water faces ongoing water
7 supply issues. However, he contends that adoption of Staff's recommendation will exacerbate the
8 situation if a similar limit on new connections is not also imposed on Gila County (Ex. P-1, at 2; Ex.
9 P-2, at 3). Mr. Hardcastle testified that a total moratorium for Pine Water will lead to other
10 customers outside the Commission's jurisdiction using the same water supplies currently used by
11 Pine Water. Mr. Hardcastle cites to the existence of a number of water districts that are not subject to
12 limits on connecting new customers and ongoing efforts by Gila County to develop the
13 Pine/Strawberry area despite the lack of adequate sources of water (Ex. P-1, at 3-5). He claims that
14 the Staff Report fails to recognize that a moratorium on Pine Water will not improve the water supply
15 situation because the County and developers will continue to circumvent the Commission's
16 jurisdiction by forming districts (*Id.* at 6).

17 11. The Company also contends that Staff's analysis does not take into account the limited
18 short-term nature of Pine Water's peak demand. As described above, Staff determined that Pine
19 Water's current water resources were capable of serving a maximum of 555 customers based on
20 usage data averaged over the June 2003 peak month. Despite Staff's calculation, Mr. Hardcastle
21 stated that Pine Water has been able to serve its entire base of nearly 2,000 active customer accounts
22 for several years by pumping water through the Project Magnolia pipeline and, when necessary, by
23 hauling water into the system. The Company claims that these measures are generally necessary only
24 to meet demand during summer weekends, especially holiday weekends.

25 12. At the January 31, 2005 public comment hearing in Pine, and at the beginning of the
26 evidentiary hearing, a number of Pine Water customers offered comments regarding the proposed

27
28 ("GPM") per user. Staff then divided the Company's available well production sources of 93.88 by 0.17 GPM per user to reach its conclusion that Pine Water is capable of serving only 555 service connections during peak months (*Id.* at 2-3).

1 moratorium on new connections. Among the public comment witnesses was Harry Jones, who read
2 into the record a letter written by District 1 Supervisor for Gila County, Ms. Tommie Cline Martin
3 (Tr. 32-37). Supervisor Martin's letter raised a number of issues related to the proposed moratorium
4 and advocated using a cooperative approach between various stakeholders⁵ to attempt to develop a
5 long-term regional solution to the long-standing water shortage issues in northern Gila County. In
6 her letter, Supervisor Martin requested that the Commission limit Pine Water's new service
7 connection limit to two per month, for the next six months, in order to allow time for her to get up to
8 speed and assist in developing a solution for the water issues facing Gila County.

9 13. Although Pine Water opposes reducing the current 25 new meters per month limit, Mr.
10 Hardcastle testified that the Company was not opposed to Supervisor Martin's proposed two meter
11 per month limit as an interim measure (Tr. 193-194; 361). As a practical matter, the two connections
12 per month limitation would not cause an adverse effect on Pine Water's operations because the
13 Company added a total of only 22 new customers in 2004 (Tr. 194).

14 14. Staff continues to recommend that a total moratorium on new connections should be
15 imposed due to the lack of available water resources to Pine Water. However, at the hearing, Staff
16 witness Steve Olea testified that it may be appropriate to phase-in the moratorium along the lines
17 suggested in Supervisor Martin's letter (Tr. 316).

18 Blue Ridge Reservoir

19 15. During public comments and the evidentiary hearing, the possibility that Pine Water
20 could obtain water from the Blue Ridge Reservoir was a frequent topic for discussion. The Blue
21 Ridge Reservoir is a water reservoir located approximately 25 miles north of Pine in Coconino
22 County, near an area called Clint's Well. Mr. Hardcastle stated that the water rights to the reservoir
23 were formerly owned by Phelps Dodge but, through a recent transaction, the Phelps Dodge water
24 rights will be transferred ultimately to the Bureau of Reclamation. According to Mr. Hardcastle, the
25 agreement provides that up to 3,500 acre feet per year of water from the Blue Ridge Reservoir would
26 be available for Gila County, of which the first 3,000 acre feet would be allocated to the City of
27

28 ⁵ Supervisor Martin stated that she intends to bring together representatives of Pine Water, various area water districts, Gila County staff members, real estate developers, landowners, and other interested citizens.

1 Payson, and the other 500 acre feet, subject to availability, would be allocated to northern Gila
2 County, including the Pine-Strawberry area (Tr. 108). Mr. Hardcastle testified that preliminary
3 estimates of the cost of constructing pipelines to access the Blue Ridge water are \$30 million to \$40
4 million for Payson and \$10 million to \$15 million for the Pine area. Due to the projected cost of
5 building such a pipeline, with no assurance that water would be available within any given year, Mr.
6 Hardcastle stated that a Blue Ridge Reservoir project as a source of water for Pine Water "just
7 doesn't seem to make a lot of sense" (Tr. 111).

8 **Additional Storage**

9 16. Another potential solution raised at the hearing was the issue of whether it would be
10 feasible for Pine Water to build additional storage facilities. The possibilities of mining water during
11 winter months for use in the summer, as well as the use of additional storage to mitigate summer
12 weekend peaks, were discussed by various customers. Pine Water currently has approximately
13 900,000 gallons of storage capacity. Mr. Hardcastle testified that adding an additional 1 million
14 gallons of storage would cost approximately \$1 million. In response to questions regarding the
15 storage issue, Mr. Hardcastle testified that there is likely not a sufficient incremental amount of
16 production capacity available during off-peak periods that would enable the Company to build up
17 sufficient storage capacity to avert weekend peak shortages. With respect to winter storage, Mr.
18 Hardcastle claims that it is unclear whether "over-mining" in winter months would have a detrimental
19 effect on the fragile sources available during summer months (Tr. 129-130). He stated that three or
20 four years ago the Company explored building a large above-ground storage reservoir but determined
21 that such a facility was not economically feasible. According to Mr. Hardcastle, the cost of a 25
22 million gallon winter storage reservoir would range from \$750,000 up to \$7 million depending on a
23 number of factors, including the size and location of the property used; water treatment costs; cost of
24 a delivery system to the reservoir; and whether the facility was lined and what type of lining is used
25 (e.g., unlined, concrete lined, balloon storage vessel) (Tr. 130-133).

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Additional Wells

1 17. During public comments, Mr. Thomas Filesi claimed that various residents of the
2 Portals III community, where he is a part-time resident, have successfully drilled wells with
3 production of approximately 30 to 35 GPM (Tr. 21). Mr. Filesi contends that the success in finding
4 water in Portals III undermines the Company's claim that additional sources of water are not
5 available in the Pine area. At the hearing, Commissioner Mundell requested that Mr. Filesi provide
6 evidence substantiating his claims. No additional documentation was received in the record on this
7 issue and Pine Water maintains that it has repeatedly been unsuccessful in drilling wells in both the
8 Pine and Strawberry areas (Tr. 143-144).

New Improvement Districts

10 18. At the hearing, Staff introduced a letter dated April 22, 2003 from ADEQ to Loren
11 Peterson of an improvement district called Strawberry Hollow informing Mr. Peterson that although
12 Strawberry Hollow had previously been issued an Approval to Construct ("ATC") and an Approval
13 of Construction ("AOC"), Strawberry Hollow "does not meet the requirements to begin operating
14 pursuant to R18-4-602.B of the Arizona Administrative Code ("A.A.C.')." The letter advised
15 Strawberry Hollow that it does not have a 100-year drinking water certification from the Arizona
16 Department of Water Resources ("ADWR"), and therefore could not operate as a regulated public
17 water system. The letter also indicated that Strawberry Hollow does not meet the requirements of a
18 "community water system" which limits service to a "public water system that serves 15 or more
19 service connections used by year-round residents or that serves 25 or more year-round residents" (Ex.
20 S-3; Tr. 316, 322-323). Staff raised this point to suggest that it is not likely that a significant number
21 of new districts will be formed in the near future. According to Staff, Pine Water's concerns about
22 the formation of new improvement districts are mitigated by the difficulty improvement districts
23 would have in meeting the 100-year supply criteria needed to qualify as a public water system (Tr.
24 262-264).

Other requested data

26 19. Commissioner Mundell requested Pine Water to provide the name of the land owner
27 and parcel number of property for which Pine Water previously had entered into an agreement to drill
28

1 a well. According to Mr. Hardcastle, the property was subsequently sold and the new owner is not
2 interested in permitting access to the Company. Mr. Hardcastle did not believe there was an
3 assignment to the new owner of the Company's right to drill a well on the property (Tr. 215). In
4 response to Commissioner Mundell's request, Pine Water submitted a late-filed exhibit on March 15,
5 2005 and attached the previous owners' recorded deed as well as a map of the subject property (Late-
6 Filed Exhibit A). However, the exhibit did not include documentation showing whether there was an
7 assignment of Pine Water's right to access the property for purposes of drilling a well.

8 20. During the hearing, Mr. Hardcastle conceded that there is an emergency situation
9 generally with respect to the water supply in the Pine-Strawberry area. However, he disagreed that
10 Staff's proposed moratorium on Pine Water was an appropriate remedy and indicated that the
11 Company would not face a real crisis in its ability to serve customers for another six to eight years
12 (Tr. 218-220). Commissioner Mayes requested that the Company provide internal projections that
13 support its claim that no crisis would exist for a 6-8 year period at current growth levels and Mr.
14 Hardcastle agreed to provide that information (Tr. 220-221). In its March 15, 2005 late-filed exhibit,
15 the Company submitted an analysis performed in 2001 that appears to be a projection of customer
16 growth and capacity requirements over a number of years (Late-Filed Exhibit B).

17 21. Commissioner Mayes also requested that the Company provide actual water loss data
18 for 2004 to support its claim that the annualized water loss rate is 10 percent (Tr. 223). In its March
19 15, 2005 late-filed exhibit, the Company attached its water use data for 2004 and calculated a water
20 loss rate of 10.54 percent (Late-Filed Exhibit C).

21 **ADEQ Compliance Issues**

22 22. In the Staff Report, Staff cited several deficiencies it had discovered with respect to
23 the interconnected Pine Water-Strawberry Water system's compliance with ADEQ requirements.
24 Staff indicated that Pine Water was deficient in the following respects: failure to submit an accurate
25 drawing of the system pursuant to a Consent Order between ADEQ and E&R Water; existence of a
26 Notice of Violation ("NOV") for operating two wells (the Blooms and Weeks wells) without an ATC
27 or AOC and failure to properly maintain certain specified facilities; NOV for the interconnected
28

1 Strawberry system for failure to provide a consumer confidence report⁶; and an ADEQ report of
2 approximately 20 plant facility deficiencies that need to be corrected (Ex. S-1, at 2). In its March 17,
3 2005 late-filed exhibit, Staff attached an ADEQ Drinking Water Compliance Status Report for the
4 Pine system which indicates that the system "is currently delivering water that meets water quality
5 standards...."

6 23. In his Direct testimony, Mr. Hardcastle testified that Pine Water was not aware of the
7 1994 Consent Order between ADEQ and E&R Water when Brooke Utilities acquired E&R. He
8 stated that preparation of an as-built set of engineering drawings, that was agreed to be produced by
9 E&R as part of the Consent Order, would likely cost the Company in excess of \$100,000. Mr.
10 Hardcastle stated that such an expenditure of funds would not be a prudent investment given the
11 ongoing water supply issues facing Pine Water. He said the Company would attempt to resolve the
12 issue with ADEQ (Ex. A-1, at 9).

13 24. With respect to the Blooms and Weeks wells, Mr. Hardcastle indicated that Brooke
14 Utilities owns and operates the wells pursuant to water sharing agreements with the owners of the
15 land where the wells are located. He stated that when the wells were drilled in 1998, Brooke Utilities
16 did not believe that an ATC or AOC were required because the cost of each well was under \$50,000.
17 Mr. Hardcastle testified that the other deficiencies associated with those wells are being promptly
18 addressed by the Company (*Id.* at 10-11).

19 25. Regarding the other plant facility deficiencies identified by ADEQ, Mr. Hardcastle
20 testified that Pine Water has not been found in violation with respect to those items and ADEQ has
21 not set forth any obligations or timelines for repair of the deficiencies. He stated the Company is in
22 the process of replacing three concrete well slabs and fences around the well sites, and he expects that
23 all of the deficiencies "will be corrected promptly and certainly by the next regularly scheduled field
24 inspection" (*Id.* at 11).

25 ..
26 ..
27 ..
28 ⁶ The Company attached to Mr. Hardcastle's testimony a letter from ADEQ, dated January 12, 2005, stating that ADEQ had closed the NOV because the Company had previously sent the required documentation (Ex. P-1, at 8-9; Ex. A).

1 Conclusion

2 26. We believe it is appropriate to place a two new residential meters per month limit on
3 Pine Water on an interim basis as a means of enabling all affected stakeholders to discuss possible
4 long-term solutions to the chronic water shortage issues that have plagued the Pine area for a number
5 of years. However, a total moratorium on main extension agreements and commercial connections
6 shall continue to be in effect in order to mitigate the potential detrimental effects associated with
7 adding a significant number of customers and/or high volume users.

8 27. We expect representatives of Pine Water and the Commission's Staff to be actively
9 involved in analyzing and discussing all feasible long-term permanent⁷ solutions to the water
10 shortage issues in Pine. Consideration should be given to, at a minimum, the following: growth
11 limits on Gila County development outside the Pine Water service area; additional well sources;
12 additional storage capacity; Blue Ridge Reservoir pipeline; CAP water trade with Salt River Project
13 ("SRP") for Fossil Creek water; deep drilling in the Coconino sandstone; and any other permanent
14 solutions that may be suggested or developed by the stakeholders and government entities. Such
15 discussions should attempt to include representatives of all affected entities and stakeholders,
16 including ADEQ, ADWR, SRP, Payson, Pine-Strawberry Water Improvement District ("PSWID")
17 and Gila County. The participation of Gila County in this effort is especially critical because
18 restrictions placed exclusively on Pine Water will not resolve the long-standing chronic water
19 shortage issues faced in northern Gila County.

20 28. Staff and the Company should submit jointly or separately, by no later than October
21 31, 2005, a report with recommendations regarding specific long-term solutions to the Pine Water
22 shortage issues. We also direct the parties to work with Gila County Supervisor Martin, and other
23 county officials, to ensure that Gila County's input is received and considered in any
24 recommendations that are proposed in the forthcoming analysis and report.

25 29. The two new residential connections per month limit for Pine Water shall be
26
27

28 ⁷ Staff witness Steve Olea defined a "permanent" solution as a "permanent, continuous source of water that can adequately supply not only the existing customers, but growth" (Tr. 309).

1 new service connections per month previously imposed on Pine Water Company pursuant to
2 Decision No. 64400, as modified by Decision No. 65435, is reasonable and in the public interest.

3 IT IS FURTHER ORDERED that Pine Water Company shall be limited to two new
4 residential service connections per month, implemented on a first-come, first-served basis, with no
5 carryover from month-to-month, and such limitation shall remain in effect until further Order of the
6 Commission or until April 30, 2006, whichever comes first.

7 IT IS FURTHER ORDERED that if by April 30, 2006, a permanent solution to Pine Water
8 Company's water shortage issues is not established or if the Commission has not issued a further
9 Order to the contrary, a total moratorium on any new connections to Pine Water Company shall
10 become effective on May 1, 2006.

11 IT IS FURTHER ORDERED that all conditions placed on the installation of meters that have
12 been contained in previous Commission Decisions for Pine Water Company shall remain in effect
13 during this modified moratorium.

14 IT IS FURTHER ORDERED that a total moratorium on main extension agreements and
15 commercial connections shall continue to be in effect in order to mitigate the potential detrimental
16 effects associated with adding a significant number of customers and/or high volume users.

17 IT IS FURTHER ORDERED that representatives of Pine Water Company shall commence an
18 analysis and discussions with all affected entities and stakeholders, including Staff, ADEQ, ADWR,
19 SRP, Payson, PSWID and Gila County, in order to develop a long-term permanent solution to the
20 chronic water shortage issues in the Pine, Arizona area.

21 IT IS FURTHER ORDERED that, in the analysis and discussions undertaken by the
22 participating entities, consideration should be given to, at a minimum, the following: growth limits on
23 Gila County development outside the Pine Water service area; additional well sources; additional
24 storage capacity; Blue Ridge Reservoir pipeline; CAP water trade with SRP for Fossil Creek water;
25 deep drilling in the Coconino sandstone; and any other permanent solutions that may be suggested or
26 developed by the stakeholders and government entities.

27 IT IS FURTHER ORDERED that Pine Water Company and Staff shall submit jointly or
28 separately, by no later than October 31, 2005, a report with recommendations regarding specific long-

1 term solutions to the Pine Water shortage issues.

2 IT IS FURTHER ORDERED that Pine Water Company shall immediately contact ADEQ in
3 order to resolve issues related to: the need for as-built engineering drawings; the existing NOV for
4 the Blooms and Weeks wells; and repair of any outstanding plant facility deficiencies.

5 IT IS FURTHER ORDERED that Pine Water Company shall file within 90 days of the
6 effective date of this Decision a report discussing how these ADEQ matters have been resolved and
7 what efforts the Company has taken to ensure that similar deficiencies are not likely to reoccur.

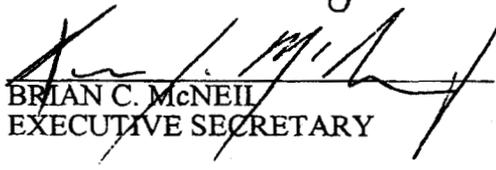
8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
11   
12 CHAIRMAN COMMISSIONER COMMISSIONER

13
14  
15 COMMISSIONER COMMISSIONER

16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
17 Secretary of the Arizona Corporation Commission, have
18 hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this 5th day of May, 2005.

21 
22 BRIAN C. McNEIL
23 EXECUTIVE SECRETARY

24 DISSENT _____

25
26 DISSENT _____

27 DDN:mj

1 SERVICE LIST FOR:

PINE WATER COMPANY

2 DOCKET NO.:

W-03512A-03-0279

3

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20 Arizona Corporation Commission

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21

22

23

24

25

26

27

28

EXHIBIT C

Letter from Brooke Utilities, Inc.

April 20, 2005

COPY

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Call Center • P.O. Box 9016 • San Dimas, California 91773-9016 • (800) 270-6084

ROBERT T. HARDCASTLE
(661) 633-7526
Fax (781) 823-3070
RTH@brookeutilities.com

April 20, 2005

Ray Pugel
Coldwell Banker Bishop Realty
3617 Highway 87
P.O. Box 189
Pine, AZ 85544

Re: Request for Meter Connection at FLTR PL Lot 1,
Pine Water Co., Inc., Pine, AZ

Dear Mr. Pugel,

Your application for a commercial water meter service at the location referenced above has been duly considered by Brooke Utilities and the Utilities Division of the Arizona Corporation Commission (the "Commission"). In Commission Decision No. 59753 (July 1996, page 12, lines 22-23) limitations on meter installations were described as being "limited to one single family residential connection per month". Further, the pending "Supplemental Opinion and Order on New Service Connection Moratorium" (Docket No. W-03512A-03-0279) specifically provides that a "total moratorium on main extension agreements and commercial connections shall continue to be in effect" (May 2005, page 13, lines 5-6).

In light of this regulatory background, and the continuing water supply deficiencies in the Pine area, your request for a new commercial water meter service at this location is denied. You may individually seek a variance to any Commission Decision citing special mitigating circumstances or otherwise seek clarification of Commission actions directly from the Commission.

Sincerely,

Robert T. Hardcastle
President

cc:

RTH correspondence file
M.J. DS, MB
J. Shapiro, Esq.
B. Morton, ACC
C. Walczak
S. Otea

Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.