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AZ CORP COMMISSION  
DOCUMENT CONTROL

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. W-03512A-06-0407

} MOTION TO AMEND APPLICATION FOR  
DELETION OF TERRITORY FROM  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY OF PINE WATER COMPANY  
AND PROPOSED FORM OF ORDER

Arizona Corporation Commission  
DOCKETED

OCT 17 2006

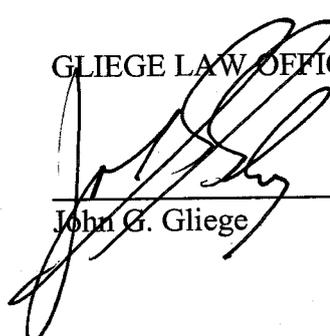
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22 COMES NOW Complainants, RAYMOND R. PUGEL and JULIE B. PUGEL, husband and wife  
23 as trustees of THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT  
24 RANDALL and SALLY RANDALL, husband and wife, by and through their attorney undersigned and  
25 petitions this Commission pursuant to *Rule 15, Arizona Rules of Civil Procedure* to file an amended  
26 Application for Deletion of Territory from Certificate of Convenience and Necessity of Pine Water  
27 Company to add additional territory to be deleted as described in Exhibit A. A copy of the proposed  
28 Amended Application for Deletion of Territory from Certificate of Convenience and Necessity of Pine  
29 Water Company is attached hereto with all exhibits. This Motion is supported by the aforesaid Rule and

1 justice requires the amendment of the Application so that all of the Complainants' territories for deletion  
2 may be fairly represented in this matter. This motion is based upon the following points and authorities.

3 Respectfully submitted this 16<sup>th</sup> day of October, 2006.

4  
5 GLIEGE LAW OFFICES, PLLC

6  
7   
8 \_\_\_\_\_  
9 John G. Gliege

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Pursuant to *16 A.R.S. Rules of Civil Procedure, Rule 15(a)* a party may amend the party's  
12 pleading once as a matter of course at any time before a responsive pleading is served or, if the  
13 pleading is one to which no responsive pleading is permitted and the action has not been placed upon  
14 the trial calendar, the party may so amend it at any time within twenty days after it is served.  
15 Otherwise a party may amend the party's pleading only by leave of court or by written consent of the  
16 adverse party. Leave to amend shall be freely given when justice requires.

17 In the case before the Commission as indicated by the allegations of the *Amended Application*  
18 *for Deletion of Territory from Certificate of Convenience and Necessity of Pine Water Company*  
19 Complainants are applying for deletion of territory and have added additional territory to their request  
20 for deletion. Nothing is changed in the Application except for the inclusion of additional lands.

21 In *Spitz v. Bache & Company, Inc., 122 Ariz. 530; 596 P.2d 365; (1979)* the Arizona Court  
22 cited *Foman v. Davis, 371 U.S. 178; 83 S. Ct. 227; 9 L. Ed. 2d 222; (1962)* and adopted the reasoning  
23 of the U.S. Supreme Court:

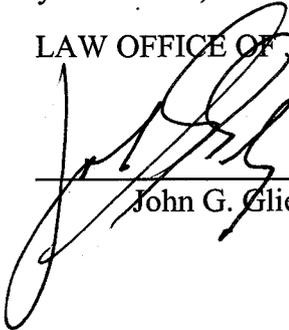
24  
25 ...If the underlying facts or circumstances relied upon by a plaintiff may be a proper  
26 subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In  
27 the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory  
28 motive on the part of the movant, repeated failure to cure deficiencies by amendments  
29 previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
amendment, futility of the amendment, etc. – the leave sought should, as the rules require,  
be “freely given.”

1 In the case before this Commission the Complainants are seeking to include territory in the  
2 *Application for Deletion of Territory from Certificate of Convenience and Necessity of Pine Water*  
3 *Company*, not to cause undue delay, nor to prejudice Pine Water Company.

4 **WHEREFORE** the Complainants respectfully request that the Administrative Law Judge  
5 grant their Motion to allow for the amending of the original *Application for Deletion of Territory from*  
6 *Certificate of Convenience and Necessity of Pine Water Company* to add territories which are also  
7 owned by the Applicants.

8 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of October, 2006.

9 LAW OFFICE OF JOHN G. GLIEGE

10  
11   
12 \_\_\_\_\_  
13 John G. Gliege

13 Original and thirteen copies of the foregoing  
14 Mailed this 16<sup>th</sup> day of October, 2006 to:

15 Docket Control Center  
16 Arizona Corporation Commission  
17 1200 W. Washington Street  
18 Phoenix, AZ 85007

19 Copies of the foregoing  
20 Mailed this 16<sup>th</sup> day of October, 2006 to:

21 Jay L. Shapiro  
22 Thomas R. Wilmoth  
23 Fennemore Craig  
24 3003 North Central Ave. Ste 2600  
25 Phoenix, AZ 85012-2913

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

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4 **(928) 226-8333**

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

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. W-03512A-06-0407**

**ORDER RE:**  
**MOTION TO AMEND APPLICATION FOR**  
**DELETION OF TERRITORY FROM**  
**CERTIFICATE OF CONVENIENCE AND**  
**NECESSITY OF PINE WATER COMPANY**

21 Upon motion of the Complainants and for good cause shown the Complainants' Motion to  
22 Amend the Application for Deletion of Territory from Certificate of Convenience and Necessity of Pine  
23 Water Company is hereby granted and the Amended Application for Deletion of Territory from  
24 Certificate of Convenience and Necessity of Pine Water Company attached to said motion may be filed  
25 and served in the above captioned action.

26 DONE this \_\_\_ day of \_\_\_\_\_, 2006.

27  
28 **Arizona Corporation Commission**  
29



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.

- 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.

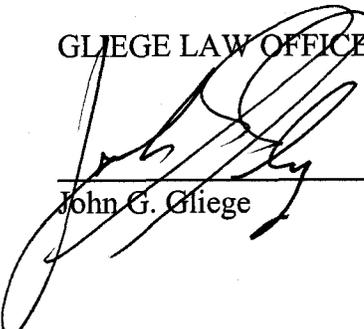
1 **VI. RELIEF SOUGHT**

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 16<sup>th</sup> day of October, 2006.

10  
11 GLIEGE LAW OFFICES, PLLC

12  
13   
14 \_\_\_\_\_  
15 John G. Gliege

16 Original and thirteen copies of the foregoing  
17 Mailed this 16<sup>th</sup> day of October, 2006 to:

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19 Arizona Corporation Commission  
20 1200 W. Washington Street  
21 Phoenix, AZ 85007

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25 Thomas R. Wilmoth  
26 Fenmore 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**

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## 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.

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:

The West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian EXCEPT that portion lying easterly of Old Pine Highway.

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:

PT SEC 36 T12N R8E; COMM E4 SEC 36; TH N87D09'23 W 1322.89' TO POB; TH S2D27'43 W 463.27'; TH S ALG CTR/LN OLD PINE HWY 856'; TH S87D03'39 E 30'; TH N ALG E R/W SAID OLD PINE HWY 1016.69'; TH ALG THE W R/W HWY 87 501' +- TO POB; APPROX 5.75 AC M/L







**EXHIBIT B**

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

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

RECEIVED

COMMISSIONERS

DOCKETED

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 intervenors<sup>1</sup>. Decision No.

<sup>1</sup> 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 month<sup>2</sup>.

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 <sup>2</sup> 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)<sup>3</sup> 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)<sup>4</sup>. Mr. Scott testified that Staff considered the availability of water from the Strawberry system

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

27 <sup>4</sup> 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 stakeholders<sup>5</sup> 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 <sup>5</sup> 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).

26 ...

27 ...

28

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

9  
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

25  
26  
27 19. Commissioner Mundell requested Pine Water to provide the name of the land owner  
28 and parcel number of property for which Pine Water previously had entered into an agreement to drill

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 report<sup>6</sup>; 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 <sup>6</sup> 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 permanent<sup>7</sup> 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 <sup>7</sup> 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 implemented on a first-come, first-served basis, with no carryover from month-to-month<sup>8</sup>, and shall  
 2 remain in effect until further Order of the Commission.

3 30. Regarding the compliance issues raised by Staff, it appears from Staff's latest filing  
 4 that Pine Water is currently in compliance with ADEQ drinking water requirements and, as such,  
 5 there do not appear to be any immediate health and safety issues raised by Pine Water's ongoing  
 6 operations. However, there are several matters identified by Staff that require Pine Water's attention  
 7 and we will therefore direct the Company to immediately contact ADEQ in order to resolve the issues  
 8 discussed above. Specifically, Pine Water shall seek to resolve the need for as-built engineering  
 9 drawings; the existing NOV for the Blooms and Weeks wells; and repair of any outstanding plant  
 10 facilities deficiencies. Pine Water shall file within 90 days of the effective date of this Decision a  
 11 report discussing how these matters have been resolved and what efforts the Company has taken to  
 12 ensure that similar deficiencies are not likely to reoccur.

### 13 CONCLUSIONS OF LAW

14 1. Pine Water is a public service corporation within the meaning of Article XV of the  
 15 Arizona Constitution and A.R.S. §§40-201, 40-203, and 40-252.

16 2. The Commission has jurisdiction over the Company and of the subject matter of the  
 17 application.

18 3. Modification of the 25 new service connections per month previously imposed on Pine  
 19 Water pursuant to Decision No. 64400, as modified by Decision No. 65435, is reasonable and in the  
 20 public interest.

21 4. Staff's recommendation for a complete moratorium on new connections should be  
 22 modified to allow up to two new residential service connections per month, on a first-come, first-  
 23 served basis, with no carryover from month-to-month.

### 24 ORDER

25 IT IS THEREFORE ORDERED that the modification proposed in this Decision of the 25  
 26

27 <sup>8</sup> The prohibition against a month-to-month carryover will limit Pine Water to connecting no more than two new  
 28 customers in any given month, and may require the Company to develop a waiting list to ensure that new connections are  
 established on a first-come, first-served basis. The "no carryover" policy is currently in effect for the 25 connections per  
 month limit pursuant to Decision No. 64400 (January 31, 2002).

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-

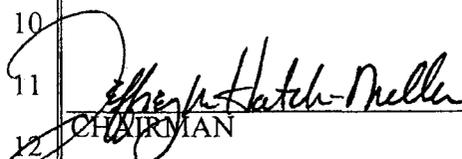
1 term solutions to the Pine Water shortage issues.

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 CHAIRMAN COMMISSIONER COMMISSIONER  
12

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 5<sup>th</sup> 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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23

24

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28

**EXHIBIT C**

**Letter from Brooke Utilities, Inc.**

**April 20, 2005**

## **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  
MJ, DS, MB  
J Shapiro, Esq.  
B. Morton, ACC  
C. Walczak  
S. Olea