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GLIEGE LAW OFFICES, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388
(928) 226-8333

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John G. Gliege (#003644)
Stephanie J. Gliege (#022465)
Attorney for Complainants

AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

ASSET TRUST MANAGEMENT, CORP.

Complainants,

v.

PINE WATER COMPANY, an Arizona
Corporation

Respondent.

DOCKET NO. W-03512A-06 -613

REPLY TO PINE WATER COMPANY'S
OPPOSITION TO COMPLAINANT'S
MOTION TO CONSOLIDATE

(Oral Argument Requested)

COMES NOW ASSET TRUST MANAGEMENT, CORP., by and through its attorney undersigned and hereby files this Reply to Pine Water Company's Opposition to Complainant's Motion to Consolidate. Asset Trust Management asserts that the Opposition of Pine Water Company is without merit and the Hearing Officer should grant the Motion to Consolidate. This Reply is supported by the following Memorandum of Points and Authorities.

Respectfully submitted this 24th day of October, 2006.

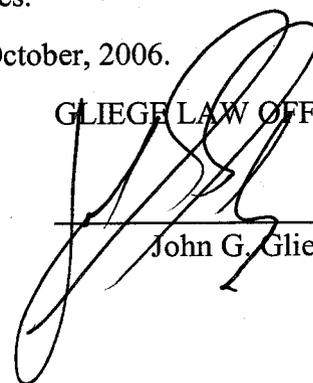
Arizona Corporation Commission

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John G. Gliege

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 It is abundantly clear that the Hearing Officer has the power and authority to order the
3 Consolidation of the two cases. In fact such practice is encouraged. *Arizona Administrative Code*
4 *§R14-3-103G* provides that:

5 . . . Two or more Complainants may join in one complaint if their
6 respective complaints are against the same respondent . . . and involve
7 substantially the same matter or thing and a like state of facts.

8 As will be noted below, the Complaint filed herein { the "ATM case"} and the Complaint heretofore
9 filed by Pugel and Randall, et al, Docket No. W-03512A-06-0407 {the "Pugel case"} both are against
10 the same respondent and involved substantially the same matter or thing and a like set of facts.

11 Further *Arizona Administrative Code § R14-3-109 H* provides:

12 The Commission . . . may consolidate two or more proceedings in
13 one hearing when it appears that the issues are substantially the same and
14 that the rights of the parties will not be prejudiced by such procedure. . . .

15 As this Memorandum of Points and Authorities indicates, clearly the facts and legal issues presented in
16 the ATM case and the Pugel case call for a Consolidation of the hearings.

17 The Commission also looks to the *Arizona Rules of Civil Procedure* for guidance in the conduct
18 of its proceedings. Two rules are pertinent to the matter brought before this Hearing Officer: *Rule 20*
19 regarding Permission Joinder and *Rule 42* regarding Consolidation. *Rule 20* provides in pertinent part:

20 All persons may join in one action as plaintiffs if they assert any
21 right to relief jointly, severally, or in the alternative in respect of or arising
22 out of the same transaction, occurrence, or series of transactions or
23 occurrences and if any question of law or fact common to all these persons
24 will arise in the action . . .

25 *Rule 42(a)* provides in pertinent part:

26 When actions involving a common question of law or fact are
27 pending before the court, it may order a joint hearing or trial of any or all
28 the matters in issue in the actions, or it may order all the actions
29 consolidated, and it may make such orders concerning proceedings therein
as may tend to avoid unnecessary costs or delay.

So strong is the policy in favor of consolidation of matters that even the *Rules of Procedure for Direct*
Appeals from Decisions of the Corporation Commission to the Arizona Court of Appeals, Rule 5

1 encourages consolidation of matters if the same are subject to the right of appeal, again in the interest of
2 judicial economy and efficiency.

3 The request of the applicant is to consolidate the ATM case with the Pugel case. The cases share
4 the following similarities of fact and of legal issues:

- 5 1. In both cases the Complainants are the owners of vacant property within the area covered by
6 the Certificate of Convenience and Necessity which is held by Pine Water Company. These
7 parties are situated in the same circumstances. They are precluded from the full use and
8 enjoyment of their property due to the circumstances about which they complain.
- 9 2. In both cases the Complainants are interested in the use and enjoyment of their property and
10 in the ability to construct improvements upon the property which in turn may be sold to other
11 parties.
- 12 3. In both cases the respondent is the Pine Water Company.
- 13 4. In both cases the Complainants have requested domestic water service from Pine Water
14 Company.
- 15 5. In both cases the Complainants have been denied service because of the inability or
16 unwillingness of Pine Water Company to provide service and because of the imposition of a
17 moratorium on new connections within the Pine Water Company Certificate of Convenience
18 and Necessity area by the Arizona Corporation Commission.
- 19 6. In both cases the moratorium on new connections imposed upon the Pine Water Company
20 was because of the inability of the Company to have and provide sufficient water to meet the
21 demands for water service within the certificated area.
- 22 7. In both cases the complainant is requesting an amendment to the Pine Water Company's
23 Certificate of Convenience and Necessity deleting their property from the Certificate of
24 Convenience and Necessity because Pine Water Company is unable or unwilling to provide
25 adequate domestic water service.
- 26 8. In both cases the Complainants have the ability to provide domestic water to their property
27 through means other than obtaining it from Pine Water Company.
- 28 9. In both cases the Complainants have raised the same legal issues regarding the ability or
29 willingness of Pine Water Company to provide service to their property as is required from

1 one possessing a Certificate of Convenience and Necessity and regarding the question of
2 whether or not the imposition of the imposition of the condition precluding connection
3 constitutes an unlawful taking of the property of the Complainants.

4 There is one factual difference between these cases which is not material to the determination of
5 the outcome of them, to wit: In the Pugel matter there is a well located on the Pugel and Randall
6 Property controlled by Pugel and Randall which can adequately serve all contemplated uses of that
7 property. In the ATM matter, the Complainant has made arrangements to purchase adequate domestic
8 water from a third party to provide adequate service for the needs of the complainant's property. That is
9 the entire difference between these two cases.¹ The attempt by Pine Water Company to show that these
10 cases are in fact different fails. The relevant factual and legal issues are the same in these cases!

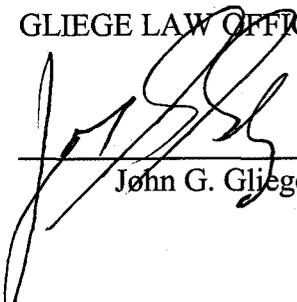
11 Common questions of law and fact mandate consolidation of cases under *Rule 42(a) Arizona*
12 *Rules of Civil Procedure*. See *Johnson v Myers, 184 Ariz 98, 907 P.2d 67 (S.Ct. 1995)*; Consolidation
13 lies within the sound discretion of the Court. {which by implication is the Hearing Officer in this
14 matter.} *Rizo v. Burruel, 23 Ariz. 137, 202 P.2d 234 (1921)*. *London, Paris and American Bank, Ltd*
15 *v. Abrams, 6 Ariz 87, 53 P. 588 (1898)* Practical considerations such as the impact of a decision in one
16 case upon other similar cases, especially concerning the allocation of a scarce resource such as water can
17 give rise to consolidation being the correct form of proceeding. *In re: Rights to the Use of the Gila*
18 *River, 171 Ariz. 230, 830 P.2d 442 (S. Ct. 1992)* Consolidation of the cases does not constitute a merger
19 of the cases; each will be decided separately, but all issues of fact and law can be presented and argued at
20 one time. *Coyner Crop Dusters v. Marsh, 90 Ariz. 157, 367 P.2d 208 (1961; Torosian v. Paulos, 82*
21 *Ariz. 304, 313 P.2d 382 (1957)*. So long as no harm or prejudice comes to either party to the
22 proceeding. consolidation of cases is appropriate and desired. See *Clifford v. Woodford, 83 Ariz. 257,*
23 *320 P.2d 452 (1957)*. In fact the Appellate Courts will only overturn a trial courts consolidation of cases
24 where there has been an abuse of discretion. *Hancock v. McCarroll, 188 Ariz. 492, 937 P.2d 682 (Ct.*
25 *App. 1996)*

26
27
28 ¹ It should be noted that in its Objection to the Motion to Consolidate Pine Water Company has misstated the contents of the
29 Application filed in this matter in that they state that ATM fails to make any allegation regarding the existence of an
independent water source, Page 3 lines 12-14 of the Application; and further that ATM claims its property is developed,
which a reading of the application will indicate that such claim has not been made.

1 A review of the common issues of fact and law clearly mandate that consolidation of these two
2 cases will be in the best interest of the parties as well as being cost effective and efficient for the Arizona
3 Corporation Commission. To require that these cases proceed separately will cause a substantial
4 duplication of testimony, effort and time on the part of the Commission and all parties hereto.
5 Therefore, it is respectfully requested that these cases be consolidated for purposes of all proceedings
6 before the Arizona Corporation Commission.

7 Respectfully submitted this 24th day of October, 2006.

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9 GLIEGE LAW OFFICES, PLLC

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12 _____
13 John G. Gliege

14 Original and thirteen copies of the foregoing
15 Mailed this 24th day of October 2006 to:

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

20 Copies of the foregoing
21 Mailed this 24th day of October, 2006 to:

22 Jay L. Shapiro
23 Fenmore Craig
24 3003 North Central Ave. Ste 2600
25 Phoenix, AZ 85012-2913
26
27
28
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