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BEFORE THE ARIZONA CORPORATION COMMISSION

3058

COMMISSIONERS

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Arizona Corporation Commission

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ASSET TRUST MANAGEMENT, CORP.

DOCKET NO. W-03512A-06-0613

Complainants,

v.

STAFF'S RESPONSE TO COMPLAINANT'S
MOTION TO CONSOLIDATE CASES

PINE WATER COMPANY, an Arizona

Corporation,

Respondents.

Arizona Corporation Commission Staff ("Staff") hereby responds to the Motion to Consolidate filed by Pine Water Company on September 26, 2006. In order to make the most efficient use of the Commission's time and resources, Staff supports consolidation.

I. Facts

On June 19, 2006, Complainant filed with the Arizona Corporation Commission ("Commission") an Application for Deletion from Certificate of Necessity and Convenience ("Application") regarding the territory held by Pine Water Company ("PwCo") in Township 12 North, Gila County, Arizona. The Application was filed on behalf of two parties, Raymond R. and Julie B Pugel ("Pugels") as trustees of the Pugel Family Trust ("the Trust"), and Robert and Sally Randall ("Randalls"), as property owners. The Application concerns 3 specific parcels of land, Parcel 19C, owned by the Trust, and Parcels 75A and 75B, owned by the Randalls. The Application alleges as a factual matter, that the Pugels and/or Randalls have successfully dug a well on one of the concerned properties which is capable of supplying domestic water to the properties.

PWCo holds a CC&N covering the territory in which all three parcels of land are located. As stated in the Findings of Fact provided by the Commission in Decision No. 67823, the area governed in the CC&N is "subject to water shortages". (Decision 67823, Page 3, line 6) Due to the shortage issues, the Commission has ordered a moratorium on new water service connections within PWCo's

1 CC&N area, which has been modified several times over the years, reflecting the availability of water
2 to service the entire Pine and Strawberry area. The most recent action in this regard came in Decision
3 67823, when the Commission ordered that “if by April 30, 2006, a permanent solution to Pine Water
4 Company’s water shortage issues is not established ... a total moratorium on any new connections to
5 Pine water Company shall become effective on May 1, 2006.” Decision 67823, page 13, lines 7-10.

7 The threshold date came and passed without a solution to the water shortage issue and the
8 moratorium took effect. That moratorium remains in effect. The Application alleges as a factual
9 matter, that the Pugels and/or Randalls have successfully dug a well on one of the concerned
10 properties which is capable of supplying domestic water to the properties.

11 On September 22, 2006, Asset Trust Management (“ATM”) filed with the Commission an
12 Application for Deletion of Territory from Certificate of Convenience and Necessity (“Application
13 2”). Application 2 concerns the Eagle Glen Subdivision, which is owned by ATM, and is located
14 within PWCo’s CC&N territory. Application 2 alleges that ATM has the “capability of providing
15 domestic water to their property”. (Application 2, page 3, line 12-13). Application 2 also suggests
16 that PWCo has failed to provide adequate water service.

18 In response to both applications, PWCo denies that it has failed to use reasonable efforts to
19 produce water within its CC&N territory. PWCo places any blame for a failure to connect additional
20 customers to its system on the moratorium. PWCo has requested in response that the Commission
21 prevent the properties from being deleted from its CC&N and has proposed instead that a variance to
22 the moratorium be considered.

24 Both applications appear to present two separate legal issues: 1) the deletion of the named
25 properties from PWCo’s CC&N territory, and 2) an alleged taking of property under the
26 Constitutions of both the United States and Arizona.

27 ...

1 **II. Law and Argument**

2 Consolidation of cases before the Commission is governed by the Arizona Administrative
3 Code, R14-3-109(H), which allows either the Commission or the hearing officer to consolidate
4 proceedings “when it appears that the issues are substantially the same and that the rights of the
5 parties will not be prejudiced”. Both Applications appear to present the same two *specific* legal
6 issues before the Commission: 1) the deletion of the named properties from PWCo’s CC&N
7 territory, and 2) an alleged taking of property under the Constitutions of both the United States and
8 Arizona. In that respect, similar issues of law have been raised.

9
10 Therefore, consolidated hearing in these matters may well conserve agency resources, thereby
11 avoiding two hearings when one will suffice. For those reasons, Staff supports consolidation.

12
13 RESPECTFULLY SUBMITTED this 27th day of October, 2006.

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16 _____
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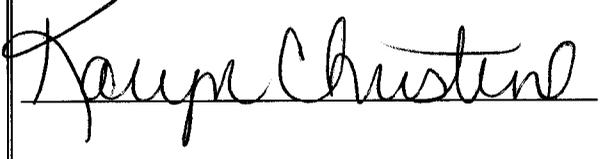
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