

**ORIGINAL FORMAL COMPLAINT**



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**ARIZONA CORPORATION COMMISSION  
OFFICE OF ADMINISTRATIVE HEARINGS  
IN THE STATE OF ARIZONA**

W-03512A-07-0019

Case No. \_\_\_\_\_

BRENT WEEKES,  
  
Petitioner,  
  
v.  
  
PINE WATER COMPANY, INC., an  
Arizona corporation,  
  
Respondent.

**COMPLAINT AND REQUEST FOR  
INTERPRETATION OF PRIOR  
DECISIONS  
OR REQUEST APPLICATION FOR  
DELETION OF TERRITORY FROM  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY OF PINE WATER  
COMPANY, INC.**

Petitioner complains of Respondent and for cause of action alleges as follows:

**JURISDICTION AND VENUE**

1. Petitioner is a citizen and resident of the State of Arizona.
2. Respondent is an Arizona Corporation and at all times material hereto has done business as an Arizona Corporation within the boundaries of Gila County.
3. The property central to the dispute in this case is located in Gila County, within the State of Arizona.
4. Jurisdiction and Venue are proper in this Court pursuant to A.R.S. §41-1092 et. seq.

Arizona Corporation Commission  
**DOCKETED**

JAN 12 2007

DOCKETED BY	
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1 **FACTUAL BASIS**

- 2 5. On January 31, 2004, the Corporation Commission issued Decision Number 64400, which  
3 governs the operations of Respondent's business.  
4  
5 6. In pertinent part, Decision 64400 states that "new service connections main line extensions  
6 is hereby approved subject to the Company's compliance with staff's recommendations as  
7 more fully described herein." Page 8, lines 3-4.  
8  
9 7. The staff recommendations contained in Decision 64400 state:

10 Staff agrees that for any new service that requires a main extension the  
11 owner/developer should be required to provide Pine Water with an  
12 independent source of water. As modified by Exhibit S-2, Staff  
13 recommends that one new service connection should equate to one  
14 residential connection or one equivalent residential unit ("ERU") with  
15 a water use of 0.20 gallons per minute, as verified using Arizona  
16 Department of Water Resources criteria with a 72-hour pump test. *Id.*  
17 at page 5, lines 23-27.

- 18 8. Based upon these recommendations, the Corporation Commission held:

19 **IT IS FURTHER ORDERED** that Pine Water Company Inc.'s current  
20 moratoria on new service connections and main extensions are hereby  
21 modified to permit the Company to initiate up to 25 new service  
22 connections per month, with no carryover to subsequent months, and  
23 that new service connections requiring a main extension shall require  
24 the owner of the requesting property to provide an independent source  
25 of water in accordance with the guidelines set forth herein. *Id.* at page  
26 8, lines 5-9.

9. Subsequent to Decision 64400, the Corporation Commission issued Decision Number  
65435 dated December 9, 2002.  
10. Staff made the following recommendations upon which the Corporation Commission based  
Decision 65435:

1 The moratoria discussed in Decision No. 64400 be modified to zero  
2 for both new meter connections and new main extensions to serve new  
3 connections. Page 3, lines 14-15 (emphasis removed).

4 ...

5 Pine Water be allowed a variance to the moratorium on new main  
6 extensions discussed-in item A above in the following manner:

7 Any customer (either a single person, a commercial entity wishing to  
8 serve a development, or anything in between) needing a water main  
9 extension in order to be served would be required to provide Pine  
10 Water with a new source of water. The new source would have to  
11 provide at least 0.5 gallons per minute ("gpm") of water per each  
12 residential equivalent unit ("REU") that may be connected to the new  
13 main. Pine Water would be allowed to install and service this new main  
14 once the customer has proven that the water source being provided is  
15 permanent and reliable. If the new source is a well, at a minimum the  
16 customer will conduct a 72-hour pump test that meets all the  
17 requirements of the Arizona Department of Water Resources for  
18 proving the pumping capacity of a new well. *Id.* at pages 3-4.

- 19 11. Upon these recommendations, the Corporation Commission issued Decision Number  
20 65435, which qualified the provisions of Decision Number 64400 as follows:

21 THEREFORE, IT IS ORDERED that after January 31, 2003, the  
22 moratorium on installation of new mains to serve new customers and  
23 the moratorium on new meter installations, both as outlined in  
24 Decision No. 64400, shall apply to the entirety of Pine Water  
25 Company, Inc.'s Certificate of Convenience and Necessity as it exists  
26 today and may be modified by Commission order in the future. *Id.* at  
page 8, lines 2-5.

12. Subsequent to Decisions 64400 and 65435, the Corporation Commission issued Decision  
Number 67823.

13. Staff's recommendations to the Corporation Commission included the following:

We believe it is appropriate to place a two new residential meters per  
month limit on Pine Water on an interim basis as a means of enabling  
all affected stakeholders to discuss possible long-term solutions to the

1 chronic water shortage issues that have plagued the Pine area for a  
2 number of years. However, a total moratorium on main extension  
3 agreements and commercial connections shall continue to be in effect  
4 in order to mitigate the potential detrimental effects associated with  
adding a significant number of customers and/or high volume users.  
Page 11, lines 2-7.

5 14. Based on these recommendations the Corporation Commission made orders as follows:

6 IT IS FURTHER ORDERED that Pine Water Company shall be limited  
7 to two new residential service connections per month, implemented on a  
8 first-come, first-served basis, with no carryover from month-to-month,  
9 and such limitation shall remain in effect until further Order of the  
Commission or until April 30, 2006, whichever comes first. *Id.* at page 13,  
lines 3-6.

10 ...

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

14 IT IS FURTHER ORDERED that a total moratorium on main  
15 extension agreements and commercial connections shall continue to be  
16 in effect in order to mitigate the potential detrimental effects associated  
17 with adding a significant number of customers and/or high volume  
users. *Id.* at page 13, lines 11-16.

18 15. As of April 30, 2006 the Corporation Commission had issued no ruling modifying Decision  
19 67823, and therefore Pine Water Company's allowance of 2 new connections per month  
20 was reduced to zero.

21  
22 16. Neither Staff nor the Corporation Commission commented in Decision 67823 on the  
23 exception to the moratorium that Decisions 64400 and 65435 implemented, allowing new  
24 main line extensions and water meters when an applicant provides his own water supply.  
25  
26

- 1 17. Based on the three aforementioned decisions, Petitioner requested the opinion of the  
2 Corporation Commission by letter dated November 21, 2005 (Exhibit A), addressed to  
3 Brad Morton, Director of the Arizona Corporation Commission Utilities Division.  
4
- 5 18. After discussing the matter with Steve Olea, Assistant Utilities Director of the Arizona  
6 Corporation Commission Utilities Division, Brad Morton stated by email dated November  
7 22, 2005 (Exhibit B) that he concurred with the conclusion of Petitioner that the exception  
8 to the moratorium for an applicant providing his own water supply was still in effect, even  
9 in light of Decision 67823.  
10
- 11 19. Based on Brad Morton's response by email, Petitioner sent a letter dated August 9, 2006 to  
12 Respondent (Exhibit C) requesting a Notice of Intent to Serve for Private Water  
13 Companies and a Main Extension Agreement from Respondent to serve a future 38-lot  
14 subdivision known as Timber Ridge ("the Property"), which would require 38 residential  
15 hookups and a main line extension.  
16
- 17 20. The Property is located within Respondent's Certificate of Convenience and Necessity as it  
18 exists today ("the CC&N").  
19
- 20 21. Petitioner proposed a suitable well site (AZ Well No. 588181 hereinafter "the Well") as the  
21 source of water for the Property, which would provide a new source of water to  
22 Respondent's operations and would exceed the minimum flow rates recommended by Staff  
23 in Decision 64400. The details of the Well were outlined in a Well Development Design  
24 Memorandum Project No. 6257-0001, performed by Tetra Tech, Inc. and dated February  
25 2003. (Exhibit D).  
26

- 1 22. Petitioner and Respondent had previously entered into a Water Sharing Agreement dated  
2 March 20, 2003, for the Well, wherein Petitioner agreed to allow Respondent to connect the  
3 Well to Respondent's existing water system and use the water. (Exhibit E, section 2,  
4 paragraph 6).  
5
- 6 23. In an Addendum To Water Sharing Agreement dated March 20, 2003, and re-executed  
7 September 24, 2004, Petitioner outlined that his purpose in developing the Well was to  
8 provide the Property with water in the future and Respondent agreed to "use its *best efforts* to  
9 assist [Petitioner] in getting the transfer of water completed." (Exhibit E Addendums).  
10
- 11 24. Respondent did not respond to Petitioner's initial request for a Will Serve Letter from  
12 Respondent, whereupon Petitioner sent Respondent a follow-up email dated August 22,  
13 2006, requesting a response from Respondent. (Exhibit F).  
14
- 15 25. Respondent denied Petitioner's request by letter dated August 21, 2006 (Exhibit G), citing  
16 the moratorium as its reason for denial.  
17
- 18 26. Petitioner contacted Brad Morton to discuss Respondent's letter, whereupon Brad Morton  
19 suggested that Petitioner file a formal Complaint against Respondent. (Exhibit H).  
20
- 21 27. Respondent subsequently issued a conditional Will Serve Letter dated October 25, 2006,  
22 stating that Respondent would provide water to the Property if Petitioner would  
23 successfully obtain a variance from the Corporation Commission. (Exhibit I).  
24
- 25 28. After conferring with Utilities Division Director, Brad Morton, Petitioner concluded that a  
26 variance request was inappropriate in this situation and sent a letter to Respondent to this  
effect dated December 8, 2006. (Exhibit J).

1 29. Upon Respondent's failure to comply with Petitioner's request contained in the December  
2 1, 2006 letter, Petitioner filed this complaint.

3 **COUNT ONE: IMPROPER DENIAL OF REQUEST**

4 30. Petitioner incorporates by reference the allegations set forth in the paragraphs above and to  
5 follow

6  
7 31. Petitioner is informed, believes, and therefore alleges that Decision 64400 allows a special  
8 exception to the moratorium when a developer provides Pine Water "with an independent  
9 source of water" which produces 0.20 gallons per minute for each new residential  
10 connection.

11  
12 32. Petitioner is informed, believes, and therefore alleges that Decisions Numbered 65435 and  
13 67823 neither discussed this exception nor invalidated this exception, but retained this  
14 exception by their silence on this point.

15  
16 33. Petitioner is informed, believes, and therefore alleges that the Well produces enough water to  
17 support at least 75 new residential connections according to the guidelines set forth in  
18 Decision 64400. The Petitioner is requesting only 38 residential connections, approximately  
19 half of the available hookups.

20  
21 34. Petitioner is informed, believes, and therefore alleges that the controlling Corporation  
22 Commission decisions allow Respondent to issue a Will Serve Letter and a Main Extension  
23 Agreement to Petitioner for water service to the Property.

24  
25 35. Petitioner is informed, believes, and therefore alleges that as a quasi-public utility provider,  
26 Respondent has a responsibility to serve the Property with water.

1 36. Petitioner is informed, believes, and therefore alleges that Respondent's denial of  
2 Petitioner's request for a Will Serve Letter and a Main Extension Agreement from  
3 Respondent was improper and did not evidence Respondent's "best efforts" in using the  
4 Well to serve the Property with water.  
5

6 WHEREFORE, Petitioner prays for relief as follows:

- 7 a. The Commission issue an opinion interpreting Decisions 65435 and 67823 in  
8 conformity with the exception to the current moratorium contained in Decision  
9 64400 and allowing that for any new service that requires a main extension the  
10 owner/developer should be required to provide Pine Water with an independent  
11 source of water that conforms to Staff's recommendations in Decision 64400,  
12 wherein one new service connection should equate to one residential connection or  
13 one equivalent residential unit ("ERU") with a water use of 0.20 gallons per minute,  
14 as verified using Arizona Department of Water Resources criteria with a 72-hour  
15 pump test.  
16  
17 b. The Commission issue an Order stating Petitioner shall retain ownership of the well  
18 and requiring Respondent to pay Petitioner for any portion (on a percentage basis)  
19 of the new water source provided by the customer that was not used for Timber  
20 Ridge since the excess water provided by the new water source will be used to serve  
21 connections that are part of Pine Water's existing distribution system.  
22  
23 c. The Commission issue an Order for Respondent to agree to execute a Drinking  
24 Water Service Agreement and a Main Extension Agreement with Petitioner to serve  
25 the Property.  
26

1 d. The Commission issue an order deleting the territory in parcel numbers 301-66-117J,  
2 301-66-117M, 301-66-117G and well sites parcel numbers 301-11-101A and  
3 approximately west 1/4<sup>th</sup> of 301-31-076E from the Certificate of Convenience and  
4 Necessity heretofore granted to the Respondent if the Commission fails to interpret  
5 Decisions 65435 and 67823 in conformity with the exception to the current  
6 moratorium contained in Decision 64400 as requested for relief as stated above in  
7  
8 (a.)

9 e. The Commission issue an Order for such further relief as the Commission deems  
10 just and proper.  
11

12 Respectfully submitted this 10 day of December, 2006

13  
14 By: 

15  
16  
17 Brent Weekes/Petitioner Pro Se  
18  
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21  
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26

**EXHIBIT A**  
**November 21, 2005 Letter to ACC**

November 21, 2005

Brent C. Weekes  
1455 W. Heather Ave.  
Gilbert, AZ 85233  
(480) 348-9322  
Fax (480) 497-1775  
oasishomes@cox.net

Arizona Corporation Commission  
Brad Morton  
1200 W. Washington  
Phoenix, AZ 85007

RE: Request concerning Pine Water Company, Inc's CCN. We need clarification that a main extension agreement is still allowable when a property owner provides an independent source of water.

Dear Mr. Brad Morton:

My wife and I have owned 50 acres in the southeast of Pine since the late 1990's. Prior to Decision No. 67823 (May 5, 2005), we drilled a new water source well and completed a 72 hour pump test. It is our desire to develop a 38 lot subdivision that would only use 1/3 to 1/2 of the well water that is able to be pumped.

In the past 4 years there has not been a moratorium against putting in a main line extension when the owner brings in an independent water source. Before we complete the engineering for the subdivision, we wanted to get a clarification of this provision still being in place.

When you read line 14 of page 13 of the Corporate Commission's Decision No. 67823 (May 5, 2005). "IT IS FURTHER ORDERED that a total moratorium on the main extension agreements"..., it sounds like no main extensions would be considered, although by reading line 15, "...shall continue to be in effect means to me that the moratorium did not change but is a continuation of the moratorium of a prior decision (see Lines 14-16 of Page 13). The Order reads: "IT IS FURTHER ORDERED that a total moratorium on main extension agreements and commercial connections shall continue to be in effect in order to mitigate the potential detrimental effects associated with adding a significant number of customers and/or high volume users." This Order does not discuss the allowable exception of a main line extension when an independent source of water is provided. In such a case, it would not be detrimental to Pine Water system when other water is added to the system.

By researching the prior history of Decisions below, I was able to learn more facts about main extension conditions:

In Decision No. 67166 (August 10, 2004) the Commission approved the rate increase and does not address the main extension moratorium

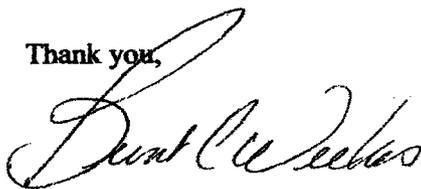
In Decision No. 65435 (December 9, 2002) The Commission ordered "the moratorium on installation of new mains to serve new customers....both outlined in Decision No. 64400, "shall apply to the entirety of Pine Water Company, Inc's Certificate of Convenience an Necessity" (see lines 2-5 of page 8). An interesting fact in the STAFF REPORT & RECOMMENDATIONS of this Decision is that the staff recommended "The moratoria discussed in Decision No. 64400 be modified to zero for both new meter connections and new main extensions to serve new connections." Yet, two paragraphs later the staff recommended the following provisions: "Any customer (either a single person, a commercial entity wishing to serve a development, or anything in between) needing a water main extension in order to be served would be required to provide Pine Water with a new source of water" (see lines 27-28 of page 3). The Staff has definitely separated the issues of a moratorium for no main extensions and a new main extension with a new source of water.

In Decision No. 64400 (January 31, 2002) the Commission ordered that "Pine Water Company Inc's current moratorium on ....main line extensions are hereby modified to permit the company to initiate...new service connections requiring a main extension shall require the owner of the requesting property to provide an independent source of water in accordance with the guidelines set forth herein". (See Lines 5-9 of page 8)

In conclusion, it appears there is a total moratorium on main extension agreements unless an independent source of water is provided. Evidently the provision in Decision No. 64400 which allows a main line extension when the owner provides Pine Water with an independent source of water is still in place.

Can you concur with this opinion? Could you please coordinate this question with the staff and respond to me by mail, fax, or e-mail. If you have any further questions feel free to call me.

Thank you,



Brent C. Weekes

**EXHIBIT B**  
**November 22, 2005 Brad Morton email**

**Brent Weekes**

**From:** Bradley Morton [BMorton@azcc.gov]  
**Sent:** Tuesday, November 22, 2005 7:40 AM  
**To:** oasishomes@cox.net  
**Subject:** Pine Water

In regards to your concern about main line extensions within Pine Water, I did confirm with Steve Olea , Assistant Utilities Director that main line extensions would be allowed if you provide the source of water. If I can be of further help, please contact me.

---

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has been scanned to detect malicious content.**

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postmaster@azcc.gov**

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2/7/2006

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**EXHIBIT C**  
**Request for Residential Water Service**

August 9, 2006

Brent C. Weekes  
1455 W. Heather Ave.  
Gilbert, AZ 85233  
(480) 348-9322  
Fax (480) 497-1775  
[oasishomes@cox.net](mailto:oasishomes@cox.net)

Bob Hardcastle  
Pine Water Company, Inc.  
3101 State Road  
Bakersfield, CA 93380-2218

RE: Request for residential water service with Pine Water Company, Inc.'s P.P.N.

Dear Mr. Hardcastle:

I would like to request a NOTICE OF INTENT TO SERVE FOR PRIVATE WATER COMPANIES and a MAIN EXTENSION AGREEMENT from Pine Water Company, Inc. to serve a future 38-lot subdivision known as Timber Ridge, which would require 38 residential hookups and a main line extension. The subject properties are within the CC&N of Pine Water Company to the southeast from the streets Mistletoe Drive and Whispering Pines Road. The parcels and ownership in Pine, Arizona are as follows:

1. Parcel No. 301-66-117J (Brent C. Weekes and Karen L. Weekes)
2. Parcel No. 301-66-117M (Skyline Mountain Investment Inc.)
3. Parcel No. 301-66-117G (Skyline Mountain Investment Inc.)

I am aware that Pine Water Company is currently under a complete moratorium on new service connections and main line extensions; however, I have researched past rulings of the Arizona Corporation Commission and have corresponded with the Corporation Commission on this subject. The Corporation Commission agrees that although Pine Water Company is currently under a complete moratorium, it may issue new service connections and main line extensions to developments that provide Pine Water Company with a new, independent water source sufficient to support the development. The Corporation Commission will make an exception to the moratorium in such a case, because it would not be detrimental to the current Pine Water system if additional water was added to the system, for the express purpose of serving the new development. The following is an analysis of my research of the controlling decisions issued by the Corporation Commission.

Starting with the most recent decision regarding the moratorium in Pine, Decision No. 67823 (May 5, 2005), the Corporation Commission states the following in lines 14-16 of page 13:

IT IS FURTHER ORDERED that a total moratorium on main extension agreements and commercial connections shall continue to be in effect in order to

mitigate the potential detrimental effects associated with adding a significant number of customers and/or high volume users.

The wording of the first line suggests that no main extensions would be considered, however a closer reading of the next line, stating that the moratorium "...shall continue to be in effect" leads us to understand that the moratorium imposed by Decision No. 97823 is in fact just a continuation of the moratorium of prior decisions.

This Order does not discuss the allowable exception of a main line extension when an independent source of water is provided. However, it does direct us to look at the conditions of prior Corporation Commission decisions for conditions. Lines 11-13 of page 13 of the same decision states:

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

By researching the prior history of Decisions, I was able to learn more facts about main extensions. The next most recent decision that discusses the Moratorium is Decision No. 65435 (December 9, 2002). This decision states in lines 2-5 of page 8:

THEREFORE, IT IS ORDERED that after January 31, 2003, the moratorium on installation of new mains to serve new customers and the moratorium on new meter installations, both as outlined in Decision No. 64400, shall apply to the entirety of Pine Water Company, Inc.'s Certificate of Convenience and Necessity as it exists today and may be modified by Commission order in the future.

Decision No. 64400 (January 31, 2002) states in lines 2-9 of page 8:

IT IS THEREFORE ORDERED that the application of Pine Water Company, Inc. for modification of moratoria on new service connections and main extensions is hereby approved subject to the Company's compliance with Staff's recommendations as more fully described herein. IT IS FURTHER ORDERED that Pine Water Company Inc.'s current moratoria on new service connections and main extensions are hereby modified to permit the Company to initiate up to 25 new service connections per month, with no carryover to subsequent months, and that new service connections requiring a main extension shall require the owner of the requesting property to provide an independent source of water in accordance with the guidelines set forth herein.

Evidently the provision in Decision No. 64400 allows a main line extension when the applicant-owner provides Pine Water Company, Inc. with an independent source of water. This provision is still in place and is incorporated into Decision 67823 holding that "all conditions placed on the installation of meters that have been contained in previous Commission Decisions of Pine Water Company, Inc. shall remain in effect during this modified moratorium."

Decision 64400 states that "new service connections main line extensions are hereby approved subject to the Company's compliance with staff's recommendations as more fully described herein," (see lines 3-4 of page 8). The staff recommendations are contained in lines 23-27 of page 5, and read as follows:

Staff agrees that for any new service that requires a main extension the owner/developer should be required to provide Pine Water with an independent source of water. As modified by Exhibit S-2, Staff recommends that one new service connection should equate to one residential connection or one equivalent residential unit ("ERU") with a water use of 0.20 gallons per minute, as verified using Arizona Department of Water Resources criteria with a 72-hour pump test.

According to these recommendations, for the Timber Ridge development, I must supply Pine Water Company, Inc. the minimum of 0.20 gpm for 38 connections which equals 7.6 gpm in order to satisfy the water needs of the new development.

I have attached the Well Development Design Memorandum Well #588181 in Strawberry Arizona, which shows the well's pumping capacity, is between 22 to 30 gpm. The report continues on to say that "the aquifer(s) should be capable of sustaining withdrawal rate of approximately 25gpm."

In his report, the engineer reduced the pumping capacity to as low as 15 gpm to buffer the well capacity decline in times of drought. According to paragraphs 1.4 of page 3 in the Proposed Well Demand of the Well Development Design Memorandum, the number of residences that can be supplied with 15 gpm are 75 total connections. I am only asking for 38 connections which equal approximately half of that number.

This well # 588181 would constitute a new, independent source of water for Pine Water Company, and would satisfy the Corporation Commission's requirements for approval of an exception to the moratorium. I have corresponded with the engineering department of the Corporation Commission on this point, and they have confirmed to me that a main line extension within Pine Water, Inc. would be allowed if I add a new water source.

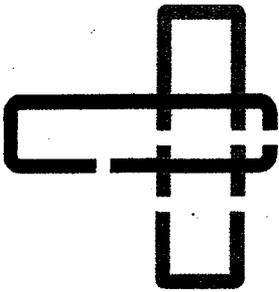
In conclusion, although there is a total moratorium on main extension agreements, the Corporation Commission will allow an exception to the moratorium if an independent source of water is provided. The enclosed Well Development Design Memorandum shows that I have a very viable water source that will produce more than the required 0.20gpm for each of the 38 residential connections. Please issue a NOTICE OF INTENT TO SERVE FOR PRIVATE WATER COMPANIES. This notice shall be subject to receiving approval from ADEQ and the Corporation Commission and will lead to the issuing of a MAIN EXTENSION AGREEMENT.

Please answer me promptly by mail, fax, or email. Please contact me if you have any questions.

Thank you,

Brent C. Weekes

**EXHIBIT D**  
**Well Development Design Memorandum**



# WELL DEVELOPMENT DESIGN MEMORANDUM

For Weekes Well No. 588181

*Submitted to:*

**Oasis Homes**  
1455 West Heather Drive  
Gilbert, Arizona 85223  
(480) 348-9322



February 2003  
Project No. 6257-0001



**TETRA TECH, INC.**

431 S Beeline Highway, Payson, AZ 85541-4816  
(928) 474-4636 · FAX (928) 474-4867

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**LIST OF APPENCENCIES**

- APPENDIX A - Well Demand and Supply Data
- APPENDIX B - Well Pump Test Data and Graphs
- APPENDIX C - Well Pump Sizing Calculations



**LIST OF EXHIBITS**

- EXHIBIT A - Well Site
- EXHIBIT B - Parcels Credited with Water Supply

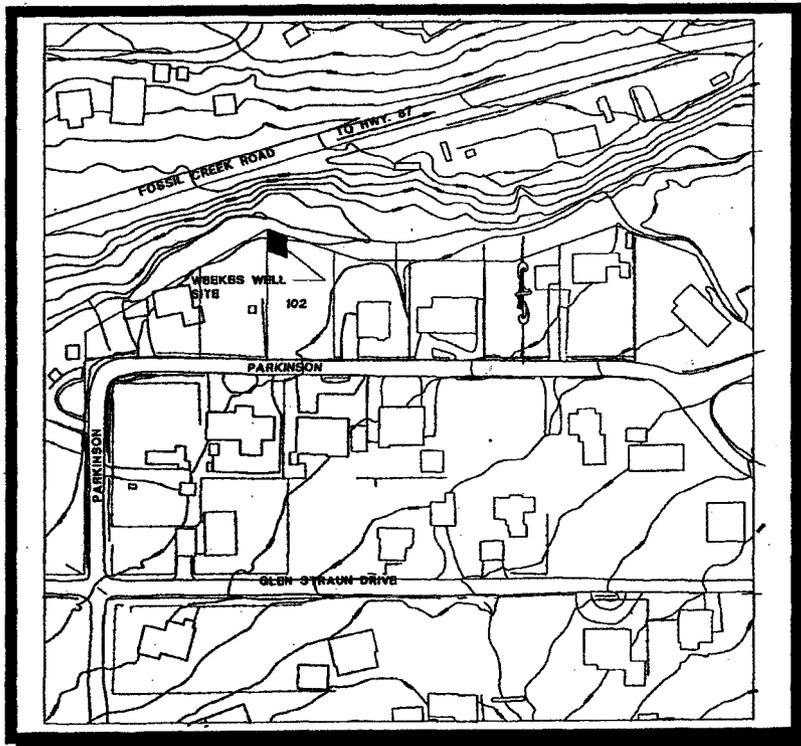
## 1.1 Introduction

Well No. 588181 (ADWR Registration Number 55-567988) is located in Strawberry, Gila County, Arizona in the Northwest corner of Lot 102 Strawberry Knolls Unit 2 (Map 240 GCR).

Legal description of site is:

Part of Lot 102 Strawberry Knolls Unit 2 (Map 240 GCR) located in the NE  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , Section 22, T12N, R9E, Gila Salt River Meridian, Gila County Arizona.

A location map is included below.



WELL NO. 588181 LOCATION MAP



Brent Weekes of Oasis Home has requested the development and connection of Well No. 588141 to the existing Strawberry and Pine (Brooke Utilities) water supply and distribution system. The intent is to offset the water supply requirements for the future development of 53.5 acres in the south portion of Tract A of Solitude Pines Unit 1 (Map 611 GCR). The Assessor's Parcel Numbers for the parcels to be credited with water supply are 301-66-117G, 117J, 117L and 117M (See Exhibit B).

This report addresses the development and utilization of Well No. 588181 in terms of supply provided to the system and any associated impacts on the system.

## 1.2 Well Capacity

Based on results of a 72-hour pump test conducted in 2002 by Arizona HydroSource, P.O. Box 891, Payson, Arizona, the minimum capacity of Well No. 588181 is 15 gpm. Refer to Appendix B for pump test data and graphs.

## 1.3 Well Integration

Well No. 588181 will be integrated into the existing Brookes Utilities, Inc. System by construction of a dedicated line from the well to an existing 6" water main that extends along Parkinson Drive. Refer to Exhibit A for Well No. 588181 site information. Additionally, a pump house will be constructed to secure the wellhead. Since the well site is within the 100 year floodplain for Strawberry Creek, all equipment in the well will be elevated a minimum of 1 foot above the 100 year water surface elevation. Additionally, the well house will be constructed to withstand the water force during the 100 year event.

The well pump size is calculated using the Total Dynamic Head (TDH) that contributes to the well. These calculations are included in Appendix "C".



#### 1.4 Proposed Well Demand

An approximation of a daily demand pattern is necessary to estimate how much the well will be contributing to the Brooke Utility Water System. Brent Weekes of Oasis Homes will be developing four (4) parcels in Tract "A" of Solitude Trails Unit 1, Pine, Arizona. Arizona Corporation Commission Decision No. 64400 requires new developers to provide Pine water with a new independent source of water for their proposed lots. New water shall be supplied at the rate of 0.20 gpm per residential connection based upon a 72-hour pump test in accordance with ADWRS criteria. Therefore the number of residences that can be supplied with 15gpm is:

$$\text{No of Residences} = 15 \frac{\text{gallons}}{\text{minute}} \times \frac{1 \text{ residence}}{0.20 \text{ gpm}}$$

Using this equation gives a total connection count of 75 new residences that can be developed by Oasis Homes.

#### 1.5 Existing System Adjustments

No additional adjustment will have to be made to the Pine/Strawberry water system with the addition of Well No. 588181.

#### 1.6 Conclusions

Well No. 588181 will be added to the Pine/Strawberry Water System to account for the future development of a portion of Tract A, Solitude Trails Unit 1. Adding the well to the water system will enable the addition of 75 residential connections on this property. The water from this well will be conveyed to the property to be developed through existing Brooke Utility pipelines. An agreement between the Developer and Brooke Utility must be executed and approved by the Arizona Corporation Commission to provide for this water conveyance.



**EXHIBIT E**  
**Water Sharing Agreement**

## Water Sharing Agreement

This Water Sharing Agreement ("Agreement") is entered into this 20th day of March 2003 by and between Brooke Utilities, Inc. ("Brooke") with business offices located at 1010 South Stover Rd., Payson, Arizona 85541 and <sup>BW</sup> ~~Brent Weekes~~ <sup>Water Resources, L.L.C.</sup> an individual, ("Water Owner") with its mailing address at 1455 W. Heather Ave, Gilbert, AZ 85233 (hereafter collectively referred to as the "Parties"). The Parties do hereby enter into this Agreement for the purpose of allowing Brooke's use of certain domestic potable water available on Water Owner's property, as defined by the terms and conditions of this Agreement, by Brooke for its use in the supply of same to its customers.

### Section I: Recitals

1. WHEREAS, Brooke is a properly organized Arizona corporation in good standing with its principal business located at that location first set forth above; and,
2. WHEREAS, Brooke, as of the date of this Memorandum, is the exclusive owner of Pine Water Co., Inc. ("Pine Water"), Strawberry Water Co., Inc. ("Strawberry Water"), Payson Water Co., Inc. ("Payson Water") and Tonto Basin Water Co., Inc. ("Tonto Basin Water"), all of which are Arizona corporations in good standing operating in Gila County, Arizona; and, Brooke Water L.L.C. ("BWLLC"), and Circle City Water Co., L.L.C. ("CCWCo."), Arizona organized limited liability companies in good standing operating in Maricopa and La Paz Counties, Arizona; and, Navajo Water Co., Inc. ("Navajo Water") an Arizona corporation in good standing operating in Navajo County, Arizona; and, all of Brooke's water companies are hereafter collectively referred to as "Water Subsidiaries"; and
3. WHEREAS, Water Subsidiaries operate individual water systems ("Water Systems") pursuant to various regulatory authorities in locations determined by the valid issuance, by the Arizona Corporation Commission ("ACC"), of Certificates of Convenience and Necessity ("CC&N") throughout all of the aforementioned Arizona counties and Pinal County, Arizona, presently serving approximate eight thousand domestic water customers; and,
4. WHEREAS, Brooke desires to supplement the existing domestic potable water supply of its Strawberry and Pine water systems with water sources in addition to those currently and previously developed by or on behalf of Brooke or any previous owner of the Water Subsidiaries; and,
5. WHEREAS, Water Subsidiaries are considered public service corporations within the meaning of Article XV of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") §§ 40-202 et. seq. and Arizona Administrative Code ("AAC") § 14-2-406 and are, therefore, subject to the various joint and several jurisdictions of ACC, Arizona Department of Environmental Quality ("ADEQ"), Residential Utility Consumers Organization ("RUCO"), Arizona Department of Water Resources

("ADWR") and other regulatory authorities which may have jurisdiction over the operations of the Water Subsidiaries and are hereafter collectively referred to as "Regulatory Authorities"; and,

6. WHEREAS, Brooke desires to supplement the existing water supply of its Water Subsidiaries for an undetermined future period so as to more adequately assure the customers of the Water Subsidiaries of a stable, constant and uninterrupted domestic potable water supply; and,
7. WHEREAS, Brooke desires to maintain the exclusive right to assign the benefits under this Agreement, and subject to the conditions of this Agreement as it relates to the creation of any third party beneficiaries, to any of its Water Subsidiaries as an assignee of such benefits; and,
8. WHEREAS, any assignment of the benefits of this Agreement by Brooke to any of the Water Subsidiaries may be subject to the advance review, consideration and approval (the "Regulatory Approval Process") by the Regulatory Authorities. In any instances where the Regulatory Approval Process is required a condition precedent to the effectiveness of this Agreement is created. Therefore, this Agreement shall not become wholly effective nor serve as a responsibility of the Parties to perform any of the duties and obligations hereunder until the Regulatory Approval Process is successfully completed in the form of approval of this Agreement; and,
9. WHEREAS, Water Owner presently owns that water source ("Water Source") more completely described in Exhibit A producing potable domestic water pursuant to the production statistics indicated therein; and,
10. WHEREAS, Water Owner is presently the exclusive beneficiary of water from the Water Source for its private domestic use and otherwise has no current or future duty or obligation to share the water from this Water Source, except for that Water Source obligations contemplated by this Agreement; and,
11. *See* → WHEREAS, Water Owner desires to sell certain domestic potable water, pursuant to Schedule 1 of Exhibit ~~E~~ of this Agreement, from its Water Source, as defined by Exhibit A of this Agreement, to Brooke, or its assignee, for its use in accordance with the terms and conditions herein.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as indicated hereafter:

## Section II: Covenants of the Parties

1. Production Determination: Brooke shall exclusively determine the production requirements of the Water Source supplying any of Water Subsidiaries based on water system demand from its customers as determined, in whole or part, in conjunction with

its other operating water sources of the applicable Water Subsidiary. In this regard, Brooke shall have the exclusive right to determine the amount, frequency and the time of required production from the Water Source for the benefit of its water system customers. However, at no time shall Brooke be obligated to utilize the Water Source as a supplemental water source for its Water Subsidiaries.

2. Responsibilities of Brooke: Brooke agrees to be responsible, as defined by this section, for the operation and maintenance of Water Owner's Water Source more fully described in Exhibit A of this Agreement. In this regard, and for all applications herein, this operational and maintenance responsibility shall include and be limited to the following: (a) monthly meter reading measuring the discharged gallons since the previous meter reading; (b) initial installation of a new water meter on the downstream side of the Water Source and necessary plumbing and equipment so as to be able to connect to the applicable water system; (c) monthly electrical utilities in excess of the average electrical utility cost more fully described by Exhibit D ("Utility Expense") and for subsequent annual utility costs thereafter as more fully described therein; (d) operator certification pursuant to ADEQ regulation R18-4-101 (5); (e) ADEQ periodic water monitoring and testing pursuant to R18-4-202, R18-4-104 (l) and R18-4-104 (a) (1); (f) general compliance related to water quality and delivery; (g) general liability insurance and property damage insurance coverage of not less than five hundred thousand dollars and no cents (\$500,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided to Water Owner within ten (10) days of the execution of this Agreement; and, (h) general repairs and maintenance to the Water Source, as exclusively determined by Brooke, not in excess of five-hundred dollars (\$500.00) annually (hereafter referred to as "Maintenance Expenses") as determined from that date first set forth above. Excluded from Brooke's responsibility under this section shall be all capital expenses, usually attributable to Water Owner, in excess of the Maintenance Expenses which act to materially extend the useful operating life of the Water Source beyond those general repair and maintenance expenses regularly incurred in the operation and maintenance of such facilities. For the purposes of this Agreement, any payment by Brooke of Maintenance Expenses as related to the Water Source, which is the subject of this Agreement, and as measured in the aggregate, is less than the annual Maintenance Expense amount, as determined from that date first set forth above, is not transferable to any subsequent Water Source operating period.
3. Responsibilities of Water Owner: Water Owner agrees to be responsible for all expenses of the Water Source as described in Exhibit A; except, however, Brooke shall be responsible for certain repair, operational and maintenance expenses more fully described by Section 2. Water Owner's resulting responsibility, hereunder, shall include, but not necessarily be limited to; (a) general liability insurance and property damage insurance coverage of not less than five hundred thousand dollars and no cents (\$500,000) combined single limit for injuries to or death of any person or persons and property damage resulting from each occurrence with evidence of same being provided

to Brooke within ten (10) days of the execution of this Agreement; (b) the monthly amount represented herein as Utility Expenses by Exhibit D; (c) real and/or personal property taxes related, in whole or part, to the Water Source; (d) Water Source repair, operational, and maintenance expense in excess of the Maintenance Expenses, and (e) compliance with all applicable laws. Also, Water Owner shall be responsible, hereunder, for all Water Source capital expenses and costs which otherwise act to materially extend the useful operating life of the Water Source, as a private asset of Water Owner, beyond any of those expenses and costs otherwise described by this section and otherwise customarily incurred in the repair, operation and maintenance of such facilities. For the purposes of this Agreement, any payment by Brooke of Maintenance Expenses as related to the Water Source, which is the subject of this Agreement, and as measured in the aggregate, is less than the annual Maintenance Expense amount, as determined from that date first set forth above, is not transferable to any subsequent Water Source operating period. Water Owner shall be responsible for prompt and timely payment, so as to not interrupt the production of the Water Source, of all expenses related to the Water Source for which he is responsible hereunder.

4. Exclusivity of Water Use: The Parties to this Agreement do hereby agree, as evidenced by the execution of this Agreement, that the use of water from the Water Source, for the entire duration of this Agreement and its subsequent renewal portions, shall be exclusively limited to the Parties or their assigns, heirs, or transferees as conducted in accordance with this Agreement.
5. Easements and Access to Water Source: At Brooke's option Water Owner shall grant to Brooke a private utility easement or a license to enter Water Owner's property for any purpose necessary under this Agreement. Brooke's access to Water Owner's property shall be related to the Water Source which must be sufficient, as exclusively determined by Brooke, for the access to the Water Source site so as to be able to perform regular repairs, operations, and maintenance of the Water Source. In any event, Brooke shall, at all times, be allowed reasonable access, ingress and egress to the Water Source for the purpose of production monitoring, well supervision, production maintenance and repairs and all other routine and regular purposes normally associated with the operation and maintenance of a water source similar to that which is the subject hereunder.
6. Connection to Public Water System: Brooke, or its agent or representative, shall connect Water Owner's Water Source to the applicable water system of the Water Subsidiaries in accordance with proper and good workmanship and general conditions of the industry. At all times, Brooke shall maintain the water connection in good condition and comply with the requirements of authorities having jurisdiction over such connection, at Brooke's sole cost and expense. The costs and expenses incurred by Brooke under this section shall not be considered "Maintenance Expenses" for the purposes of this Agreement. Brooke shall, in every case where Water Owner's property is traversed for the purposes under this section, make every reasonable effort

to approximately return Water Owner's property to that condition which existed prior to Brooke's work under this section.

7. Water Owner's Current Water Provider: As evidenced by its execution of this Agreement, Water Owner does hereby declare that it is not a current water customer of the Water Subsidiaries.

### Section III: Option to Purchase Water Source

- ju*
1. ~~Brooke's Option to Purchase Water Source: If applicable, Brooke shall be granted an option to purchase Water Owner's Water Source in accordance with Exhibit F herein.~~

### Section IV: Consideration

- du*  
*bu*
1. Payment of Consideration: Brooke shall pay to Water Owner not later than fifteen (15) days following its reading of the meter connected to the Water Source that complete consideration, except as may be defined herein, pursuant to Schedule 1 of Exhibit E. Brooke's payment to Water Owner shall be determined by measuring the total gallons of water provided to Water Subsidiary since the last meter reading at the Rate of Consideration indicated in Schedule 1 of Exhibit E. Brooke's payment shall be in valid currency of the United States or by means of corporate check. Brooke reserves the right to process such payments at any administrative facility it deems appropriate. For the purposes of this Agreement, Brooke's payment to Water Owner hereunder shall be considered paid when Brooke places payment in the United States mails for delivery to Water Owner at the address first indicated above. Excepting the first months meter reading, in no case shall the meter of Water Owner's Water Source be read by Brooke more than approximately thirty-five (35) days from that date when such meter was previously read. The first month's water production under this Agreement, as determined by Brooke's meter reading under this Agreement, shall be measured, without consideration of the date first set forth above, from that date Brooke actually began receiving water from the Water Source through the last business day of the applicable month.
  2. Supplemental Consideration: Upon execution of this Agreement and the subsequent successful accomplishment of all conditions precedent hereunder, including but not necessarily limited to the review and approval by Regulatory Authorities, if any, of this Agreement, Brooke, or at its election its assignee, shall pay to Water Owner the sum of one thousand dollars and no cents (\$1,000.00) as further consideration ("Supplemental Consideration") and an inducement to Water Owner to execute this Agreement. The Supplemental Consideration payment described by this section shall be in addition to any other form of consideration described hereunder.
  3. Minimum Consideration: Notwithstanding any provisions of the section Brooke shall have no obligation to pay Water Owner any minimum amount for its regular monthly use or nonuse of the Water Source.

## **Section V: Term**

1. **Term**: The term of this Agreement shall be twelve (12) years from the date first set forth above and shall, absent either Parties proper notice of the other Party of its intention to terminate or renegotiate the Agreement, in accordance with the requirements set forth herein, automatically be renewed for consecutive and individual five year terms thereafter subject to the termination and renegotiation provisions set forth hereunder.

## **Section VI: Termination and Renegotiation of the Agreement**

1. **Notice to Terminate**: In the event either Party desires to terminate this Agreement the Party seeking termination shall be required to provide the other Party written notice ("Termination Notice") of its intention to terminate this Agreement. The Termination Notice required hereunder shall not to be received by the non-terminating Party less than one hundred and eighty (180) days prior to the expiration of this Agreement. Failure by the Party seeking termination under this section to provide proper notice as described hereunder shall constitute a full and complete waiver by the Party seeking termination of its intentions to terminate this Agreement until the applicable notice period of the immediately succeeding twelve (12) year contract period.
2. **Notice to Renegotiate**: In the event either Party desires to renegotiate this Agreement the Party seeking renegotiation shall be required to provide the other Party written notice ("Renegotiation Notice") of its intention to renegotiate this Agreement. The Renegotiation Notice required hereunder shall not to be received by the non-noticing Party less than ninety (90) days prior to the expiration of this Agreement. Failure by the Party seeking renegotiation under this section to provide proper notice as described hereunder shall constitute a full and complete waiver by the Party seeking renegotiation of its intentions to renegotiate this Agreement until the applicable notice period of the immediately succeeding twelve (12) year contract period.
3. **Notices to Either Party**: All proper notices to either Party, as required by this section, shall be provided in accordance with other applicable notice provisions of this Agreement.
4. **Non-Cancelable Agreement**: Except in accordance with the terms and conditions of this section this Agreement shall be non-cancelable and non-terminatable by either Party.

## **Section VII: General Conditions**

1. **Successors and Assigns**: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the

obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.

2. **Indemnification:** Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless each other Party ("Indemnified Party") from and against any loss, claim, damage, expense or liability, including without limitation reasonable attorneys' fees and costs, imposed upon or suffered by the Indemnified Party (i) in the performance of its duties hereunder where such loss, claim, damage, expense or liability results from the negligence or intentional acts of the Indemnifying Party; or (ii) as a result of the Indemnifying Parties breach or default under the terms of this Agreement.
3. **Attorneys' Fees:** If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.
4. **Entire Agreement:** This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. **Headings:** Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.
6. **Third Party Beneficiaries:** Water Owner does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Brooke liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of the property of Water Owner. Brooke may, at its option, create a third party beneficiary by means of its assignment or transfer of this Agreement to Water Subsidiaries.
7. **Further Assurances:** Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. **Incorporation of Exhibits:** All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.

9. Authority: Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.
10. Notices: Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by facsimile delivered or transmitted to the party to whom such notice is required or directed:

Brooke Utilities, Inc.

3101 State Rd.  
Bakersfield, CA 93308  
attn: Robert T. Hardcastle, President  
Facsimile: (800) 748-6981

With copies to Brooke  
Utilities, Inc.

1011 So. Stover Rd.  
Payson, AZ 85541  
attn: Robert T. Hardcastle, President  
facsimile: (520) 474-1695

Water Owner:

*W. Resources, L.L.C.*  
Attn: Brent Weekes  
1455 W. Heather Dr.  
Gilbert, AZ 85223  
SS# or Taxpayers ID: < >

Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.

11. Time of Essence: Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a non-business day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. Preparation of Documents: Brooke has prepared this Agreement. Water Owner and, at its option, its counsel acknowledge the opportunity to review this document. Accordingly, the Agreement shall not be construed against Brooke or its Water Subsidiaries because the Agreement was drafted by Brooke.

13. **Arizona Law:** This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
14. **Cooperation of Parties:** The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
15. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.
16. **Joint and Several Liability:** Water Owner, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

**Acceptance**

IN WITNESS HEREOF, the parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

For: Water Owner / *W. Resources L.L.C.* *Brent Weekes*  
By: Brent Weekes

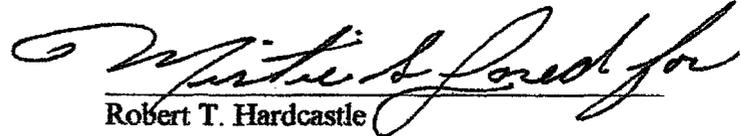
For: Brooke Utilities, Inc.  
By: *Robert T. Hardcastle*  
Its: Robert T. Hardcastle  
President

**Assignment and Assumption**

Brooke Utilities, Inc. ("Assignor"), an Arizona corporation, hereby assigns, transfers, and conveys to Strawberry Water ("Assignee") all of Assignor's title, right and interest to that Water Sharing Agreement ("Agreement") dated March 20, 2003 between Assignor and ~~Brent Weekes~~ <sup>u. Brent Weekes</sup> ("Water Owner"). Assignee hereby accepts the foregoing assignment and assume all of Assignor's obligations under the Agreement.

Dated: 3 / 20 / 03

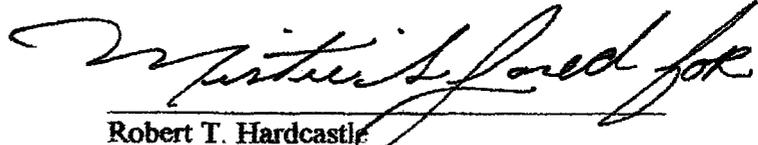
For Assignor:



Robert T. Hardcastle  
Brooke Utilities, Inc.  
President

Its:

For Assignee:



Robert T. Hardcastle  
Strawberry Water Co., Inc.  
President

Its:

## **Exhibit A**

### **Water Source Description and Production Statistics**

That Water Source presently owned by Water Owner located on that property more fully described by the legal description in Exhibit B and the vicinity map depicted in Exhibit C is further described as follows:

<b>Well Production Statistical Date</b>	<b>April 23, 2002</b>
<b>Well Location:</b>	<b>Part of Lot 102 Strawberry Knolls Unit 2 (Map 240 GCR) located in the NE 1/4 , SW 1/4 SW 1/4, Section 22, T12N, S9E, Gila Salt River Meridian, Gila County Arizona.</b>
<b>Arizona Department of Water Resources Identification Number:</b>	<b>55-588181</b>
<b>Static Water Level:</b>	<b>57 feet</b>
<b>Water Well Pump Capacity:</b>	<b>15 gallons per minute</b>
<b>Water Well Pump Elevation:</b>	<b>378 feet</b>
<b>Water Well Bore Depth:</b>	<b>400 feet</b>
<b>Water Well Bore Size:</b>	<b>6 inches in diameter</b>
<b>Water Well Casing Depth:</b>	<b>400 feet</b>
<b>Water Well Drilling Permit Number:</b>	<b>Not applicable</b>
<b>Water Well Drilling Date:</b>	<b>9/21/2001</b>
<b>Drilling Contractor:</b>	<b>Aero Drilling and Pumps, Inc.</b>
<b>Other Pertinent Information:</b>	

## **Exhibit B**

### **Water Source Property and Easement Description**

#### **Parcel No. 1**

A portion of Lot 102, Strawberry Knolls 2, according to the plat of record in the office of the County Recorders of Gila County, Arizona, recorded in Map No. 240, more particularly described as follows:

Commencing at the Northwest corner of said Lot 102. THE POINT OF BEGINNING;

THENCE North 60 degrees 23 minutes 30 seconds East 2.30 feet, upon the North line thereof, to the Northern most corner of said Lot 102;

THENCE South 70 degrees 46 minutes 00 seconds East 22.89 feet, upon the North line thereof;

THENCE South 00 degrees 17 minutes 00 seconds West 26.83 feet;

THENCE North 70 degrees 46 minutes 00 seconds 25.00 feet, to the West line of said Lot 102

THENCE North 00 degrees 17 minutes 00 seconds East 25.00 feet to the POINT OF THE BEGINNING.

#### **Parcel No. 2**

A 20 foot wide easement for ingress and egress and public utilities located in lot 102 of Strawberry Knolls Unit Two as shown on Map No. 240 of Gila County Records, situated in Section 22, Township 12 North, Range 8 East, of the Gila and Salt River Meridian, Gila County Arizona, described as follows:

Commencing at the Southwest corner of said Lot 102. THE POINT OF BEGINNING;

THENCE North 00°17'00" East 130.87 feet, upon the West line of said Lot 102;

THENCE South 70°46'00" East 21.15 feet;

THENCE South 00°17'00" West 124.00 feet, to the South boundary line of said Lot 102;

THENCE North 89°17'30" West 20.00 feet, to the POINT OF BEGINNING.

A Well site easement located in lot 102 of Strawberry Knolls Unit Two as shown on Map No. 240 of Gila County Records, situated in section 22, Township 12 North, Range 8 East of the Gila and Salt River Meridian, Gila County Arizona, described as follows:

Commencing at the Northwest corner of said Lot 102. THE POINT OF BEGINNING;

THENCE North 60°, 23' 30" East 2.30 feet, upon the North line thereof, to the Northern most corner of said Lot 102;

THENCE South 70°46'00" East 22.89 feet, upon the north line thereof;

THENCE South 00°17'00" West 26.83 feet;

THENCE North 70°46'00" West 25.00 feet, to the West line thereof;

THENCE North 00°17'00" East 25.00 feet, to the POINT OF BEGINNING.

# Exhibit C

## Water Source Property Vicinity Map



## **Exhibit D** **Consideration**

Water Owner's full and complete consideration received from Brooke for use of its Water Source as a supplemental water supply shall be based on the gallons of water utilized from the Water Source, as otherwise defined in accordance with this Agreement as measured in gallons per minute ("GPM"). Accordingly, Brooke and Water Owner agree that such compensation shall be paid in accordance with Schedule I provided below:

### Schedule I:

Water Source Production			
Water Source	Daily Water	Monthly Water	Rate of Consideration
Production	Production	Production	
in GPM	in Gallons	in Gallons	per 1,000 Gallons
5	7,200	216,000	\$ 0.50
6	8,640	259,200	\$ 0.50
7	10,080	302,400	\$ 0.50
8	11,520	345,600	\$ 0.50
9	12,960	388,800	\$ 0.50
10	14,400	432,000	\$ 0.50
11	15,840	475,200	\$ 0.50
12	17,280	518,400	\$ 0.50
13	18,720	561,600	\$ 0.60
14	20,160	604,800	\$ 0.60
15	21,600	648,000	\$ 0.60
16	23,040	691,200	\$ 0.60
17	24,480	734,400	\$ 0.60
18	25,920	777,600	\$ 0.60
19	27,360	820,800	\$ 0.60
20	28,800	864,000	\$ 0.75
21	30,240	907,200	\$ 0.75
22	31,680	950,400	\$ 0.75
23	33,120	993,600	\$ 0.75
24	34,560	1,036,800	\$ 0.75
25	36,000	1,080,000	\$ 0.75
26	37,440	1,123,200	\$ 0.75
27	38,880	1,166,400	\$ 1.00
28	40,320	1,209,600	\$ 1.00
29	41,760	1,252,800	\$ 1.00
30	43,200	1,296,000	\$ 1.00
31	44,640	1,339,200	\$ 1.00
32	46,080	1,382,400	\$ 1.00
more	1,382,401		\$ 1.25

Addendum To Water Sharing Agreement  
Dated 3/20/2003

Well owner's intention of developing the subject well was to establish a reliable water source and transfer the water usage to another property in Pine.

Brooke Utilities, Inc. agrees to use its best efforts to assist the well owner in getting the transfer of water completed.

Below is an addendum to Section VI of the Water Sharing Agreement.

*at the option of  
the Well Owner  
AW*

5. Exception to the Non-Cancelable Agreement: If the water transfer fails ~~to take place or appears to be unobtainable as per the Well Owner opinion,~~ the Water Sharing Agreement may be Terminated, ~~or Renegotiated as per the desires of the Well Owner with a one hundred and eighty (180) day notice to Brooke Utilities, Inc.~~

~~By executing the Water Sharing Agreement and this Addendum, Brooke Utilities, Inc. or its associates, assignees, purchasers, etc. shall waive any rights to condemn or purchase this property including waiving any rights established through eminent domain. This waiver of purchase rights shall extend past the Termination or Renegotiation of the Agreement.~~

*AW*

~~Brooke Utilities, Inc. shall pay owner for water used beginning July 1, 2003, pursuant to Schedule 1 of Exhibit D of the Agreement, from the total combination of gallons of water produced by the Water Sources defined by Exhibit A of the Agreement and Cedar Meadow Lane well in Pine on Parcel #301-31-076 E~~

*AW*

IN WITNESS HEREOF, the parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

For: Water Owner/W. Resources, LLC

By:

*Brent Weekes*

Brent Weekes

For: Brooke Utilities, Inc.

By:

Its:

*Robert T. Hardcastle*

Robert T. Hardcastle  
President

Addendum To Water Sharing Agreement

Dated 3/20/2003

9/24/04

Well owner's intention of developing the subject well was to establish a reliable water source and transfer the water usage to another property in Pine.

Brooke Utilities, Inc. agrees to use its best efforts to assist the well owner in getting the transfer of water completed.

Below is an addendum to Section VI of the Water Sharing Agreement.

5. Exception to the Non-Cancelable Agreement: If the water transfer fails, the Water Sharing Agreement may, at the option of the Well Owner, be Terminated.

IN WITNESS HEREOF, the parties do hereby agree to the foregoing covenants, terms, and conditions of the Agreement dated as first set forth above.

For: Water Owner/W. Resources, LLC

By:

  
Brent Weekes

For: Brooke Utilities, Inc.

By:

Its:

  
Robert T. Hardcastle  
President

**EXHIBIT F**  
**August 22, 2006 Follow-up Request for Service**

**Scott Potter**

---

**From:** Brent Weekes [oasishomes@cox.net]  
**Sent:** Tuesday, August 22, 2006 11:37 AM  
**To:** 'Scott Potter'  
**Subject:** FW: Meter hookup request  
**Attachments:** Email to Hardcastle.doc

*Brent C. Weekes*

-----Original Message-----

**From:** Brent Weekes [mailto:oasishomes@cox.net]  
**Sent:** Tuesday, August 22, 2006 10:32 AM  
**To:** 'rth@brookeutilities.com'  
**Subject:** Meter hookup request

Bob,

This email is in regards to the proposal for a NOTICE OF INTENT TO SERVE FOR PRIVATE WATER COMPANIES and a MAIN EXTENSION AGREEMENT from Pine Water Company, Inc., which I corresponded with you last week.

Would you like me to prepare a duplicate proposal packet and deliver it to your attorney for review? I am looking forward to hearing you.

Thank you,

Brent Weekes

Dear Mr. Hardcastle:

This email is in regards to the proposal for a NOTICE OF INTENT TO SERVE FOR PRIVATE WATER COMPANIES and a MAIN EXTENSION AGREEMENT from Pine Water Company, Inc., which I corresponded with you last week, and which would require 38 residential hookups and a main line extension.

I believe that the letter and proposal I sent to your office last week accurately reflects my intentions. I am aware that in the past others have approached Pine Water Company, Inc. requesting new water meter hookups, but were turned down. It is my belief that these other developments were hoping to be turned down by Pine Water Company, Inc. in order to have grounds to form their own CC&N's and create competition. It is not my desire to form my own CC&N, but to be included in the Pine Water Company, Inc. CC&N's.

I believe that my proposal would greatly benefit Pine Water Company, Inc. First, as I outlined in my letter, the well that I have proposed to use provides more than twice the amount of water that will be needed to support the development. All of this excess water can be used to serve other Pine Water Company, Inc. customers and should alleviate many of the water shortages that Pine Water Company, Inc. may face in the future. Second, allowing the Timber Ridge subdivision to be connected to Pine Water Company, Inc. would increase your revenues by increasing the number of customers in your customer base. Third, as I outlined in my previous letter, it is my belief that according to the Corporation Commission's former decisions and my conversations with the staff members, the Corporation Commission would support the proposal.

I would like to hear your preliminary thoughts on my proposal. If I can help expedite this process by any means please let me know. If it would be more convenient and help speed up the process, I would like to communicate directly with your attorney, since he is here in the Phoenix area, to save you the hassle and to save time. Let me know if I can discuss this proposal with your attorney and/or if I should prepare a duplicate proposal for him to review. I am looking forward to hearing your response.

Regards,  
Brent Weekes

**EXHIBIT G**  
**August 21, 2006 Denial of Service**

# **Brooke Utilities, Inc.**

P. O. Box 82218 • Bakersfield, California 93380-2218  
Customer Call Center • P.O. Box 9005 • San Dimas, California 91773-9016 • (800) 270-6084

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

August 21, 2006

Brent Weekes  
Oasis Homes  
1455 W. Heather Ave.  
Gilbert, AZ 85233

Re: Request for Service to 38-Lot Residential Subdivision, Pine, AZ;  
Pine Water Co., Inc.

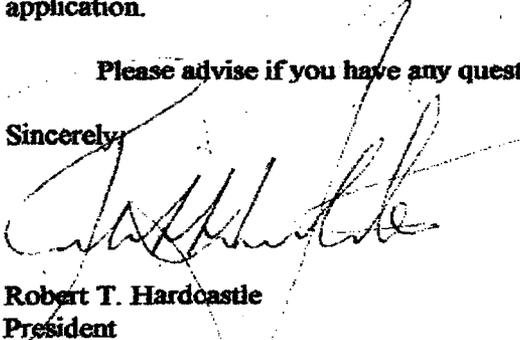
Dear Mr. Weekes,

Pursuant to receipt on August 17, 2006 of your Request for Service for domestic residential water at the 38-lot Timber Ridge subdivision in Pine, AZ, please be advised that Decision No. 67823 dated May 5, 2005 of the Arizona Corporation Commission (the "Commission") prohibits the connection of additional water meters and the extension of water mains, at this time, in the certificated area of Pine Water Co., Inc. As we both know this long standing moratorium is a situation that you are very familiar with.

In that regard, the proper course of action may be for you to file an application for variance to this Decision with the Commission. Pine Water Co. continues to be willing to work with you in this endeavor subject to the rulings of the Commission. Provided that the Commission finds sufficient water exists, Pine Water Co. would likely be in a position to support such an application.

Please advise if you have any questions.

Sincerely,



Robert T. Hardcastle  
President

cc:

RTH correspondence file  
MG, SS, MB  
Jay Shapiro, Esq.

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.

**EXHIBIT H**  
**September 19, 2006 Letter from ACC**

**COMMISSIONERS**  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL MIKE  
GLEASON KRISTIN K. MAYES  
BARRY WONG



BRIAN C. McNEil  
Executive Director

**ARIZONA CORPORATION COMMISSION**

September 19, 2006

Mr. Brent Weekes  
1455 West Heather Avenue  
Gilbert, Arizona 85233

Dear Mr. Weekes:

Enclosed is the Formal Complaint form(s) and filing procedure you requested. Please read the enclosed Formal Complaint Procedure before filling in any information. A Consumer Service Analyst has entered your Complaint Number 48432 on the formal form as noted in step A of the procedure. All information should be either typed or written in ink. Please complete the form( s) as instructed in the procedure.

The Arizona Corporation Commission ("Commission") Staff will review your complaint filing. If your complaint meets the guidelines for being a Formal Complaint, a copy will be sent to the utility company to respond to within twenty (20) days. At that time, an Administrative Law Judge will determine if the matter is ready for hearing. If so, a procedural order will be issued setting a hearing date. If you have any questions concerning the instructions for filing a Formal Complaint, please contact the Commission at (602) 542-4251 or the Commission's Docket Control at (602) 542-3477, or if you are outside the Phoenix Metropolitan area, toll free at 1-800-222-7000.

Sincerely,

*Bradley G. Morton*

Bradley G. Morton  
Public Utilities Consumer Analyst II  
Utilities Division

Enclosure (5)

cc:

**EXHIBIT I**  
**October 25, 2006 Will Serve Letter**

# FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5000

**Jay L. Shapiro**  
Direct Phone: (602) 916-5366  
Direct Fax: (602) 916-5566  
jshapiro@fclaw.com

**Law Offices**  
Phoenix (602) 916-5000  
Tucson (520) 879-6800  
Nogales (520) 761-4215  
Las Vegas (702) 692-8000

October 25, 2006

Mr. Brent C. Weekes  
1455 W. Heather  
Gilbert, Arizona 85233

**Re: Will Serve Letter—Timber Ridge Development owned by Brent and Karen Weekes and Skyline Mountain Investment, Inc.**

Dear Mr. Weekes:

We are the attorneys for Pine Water Company ("PWCo") and have been authorized to provide PWCo's response to your request for an extension of water utility service to the Timber Ridge Development (the "Development"), a 38-lot residential development owned by you, your wife and Skyline Mountain Investment, Inc. ("Developers"). We further understand that the Development is located in Pine, Arizona within the certificate of convenience and necessity ("CC&N") held by PWCo. This will serve letter outlines the process by the Developers could obtain an extension of water utility service by PWCo to the Development.

The first step is to conduct an engineering and hydrological analysis to determine the means by which water utility service will be extended to the Development. PWCo expects that Developers will design and construct any on-site facilities necessary for PWCo to serve the Development, subject to approval by PWCo and all governing jurisdictions. However, further analyses must consider projected average and peak water capacity requirements resulting from the extension of service to the Development, the existing facilities located in the vicinity of the Development, and the possibility of upgrades and improvements to PWCo's existing system necessary for PWCo to safely provide water service to the Development.

If Developers have already had such analysis conducted, then the results should be provided to PWCo. Otherwise, PWCo's consultants will need to be provided with reasonably detailed information about the Development and all plans for development in order to perform the necessary engineering and hydrological analyses. Once a determination has been made regarding the appropriate method of supplying and distributing water to the Development, formal plans and specifications for any necessary off-site water facilities will be prepared. These plans

# FENNEMORE CRAIG, P.C.

Brent C. Weekes  
October 25, 2006  
Page 2

and specifications will be submitted to the Arizona Department of Environmental Quality for review and approval. In addition, in conjunction with performing the engineering analysis and preparing the plans and specifications for the off-site facilities, a detailed cost estimate will be developed by PWCo and its consultants.

Developers will be required to enter into a written facilities extension agreement with PWCo. Depending on the outcome of the engineering and hydrological analysis, a utility plant site and/or master utility agreement(s) may also be necessary. In total, these agreements, some of which must be approved by the ACC, will govern the formal conveyance of any facilities, including wells and other water supply requirements to be provided by Developers to PWCo via bill of sale along with all necessary warranties, easements and rights-of-way. These conveyances will be in the form of advances and/or contributions in aid of construction. Consistent with Arizona utility law and practice, any advances in aid of construction will be subject to annual refunds in an amount equal to ten percent (10%) of the gross annual operating revenues, which is all revenue collected, exclusive of any taxes or pass-through costs, from the sale of water utility services by PWCo to bona fide customers within the Development. Refunds will begin in the first year following commencement of service, and shall be paid in this manner for a period of no less than ten (10) years. Any unpaid balance remaining at the end of the refund term will be non-refundable. Additional advances in aid of construction will be required of Developers for administrative and third-party expenses to be incurred by PWCo in connection with the extension of service to the Development. Such expenses include third-party costs for engineering and inspection, hydrology, accounting and legal services.

Prior to the commencement of the engineering and hydrological analyses described above, or negotiation of any of the necessary agreements, PWCo will require a deposit in the amount of \$10,000. The purpose of this deposit is to allow PWCo to begin incurring the administrative expenses identified above. Developers will be responsible for timely reimbursement of additional administrative costs as they are incurred in excess of the deposit. The deposit should be provided to PWCo, attention Robert T. Hardcastle, along with a copy of this will serve letter executed by Developers accepting and acknowledging PWCo's terms and conditions for extension of service.

Following execution of the necessary agreements by the parties, one additional step must be taken. Unfortunately, in Decision No. 67823 (May 5, 2005), the ACC imposed a total moratorium on extension agreements in PWCo's CC&N. This means that despite PWCo's willingness to extend water utility service to the Development, ACC approval must first be obtained. However, PWCo is optimistic that Developers could, with PWCo's support, obtain a variance to the moratorium, if, as you have claimed, Developers have a viable source of water that can be used to serve the Development, and possibly other PWCo customers. Such an exception to the prohibition on new connections and main extension is consistent with past ACC

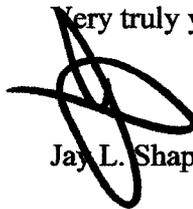
# FENNEMORE CRAIG, P.C.

Brent C. Weekes  
October 25, 2006  
Page 3

orders and has been the position PWCo has advocated as being in the public interest for several years.

My client and I look forward to working with you towards an amicable solution to the extension of water utility service to the Development. Meanwhile, please feel free to contact me if you have any questions or require any additional information.

Very truly yours,



Jay L. Shapiro

cc: Robert T. Hardcastle

## ACKNOWLEDGED AND APPROVED:

Brent C. Weekes

Karen Weekes

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SKYLINE MOUNTAIN INVESTMENT,  
INC.

By \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT J**  
**December 8, 2006 Letter to Hardcastle**

Robert Hardcastle  
President, Brookes Utilities, Inc.  
3101 State Road  
Bakersfield, CA 93380-2218  
[rth@brookeutilities.com](mailto:rth@brookeutilities.com)  
661 633-7526

December 8, 2006

Dear Mr. Hardcastle:

Enclosed you will find a copy of a Complaint I have prepared in anticipation of filing. In addition I have included the Arizona Corporation Commission's Main Extension Agreement form and ADEQ's Drinking Water Service Agreement. My Engineer is also sending you a copy of the Well Development Design Memorandum, the Well Development Plan, the approved Preliminary Plat (with the water main shown) and the Water Report for Timber Ridge. As per our recent discussions and according to the Will Serve Letter dated October 25, 2006, I realize that Pine Water Company is reluctant to apply for a Main Extension Agreement with the Arizona Corporation Commission until such time as the Commission clarifies the issues surrounding the moratorium.

I reviewed the information you sent me by email dated November 28, 2006, wherein you referenced the recent response to Pine Water's Motion to Dismiss ATM's Complaint, paying close attention to the sections you referenced. (Page 7, lines 20-24).

In addition, Staff believes that the issues presented by this case could potentially be solved by granting a variance to the moratorium. Whether a variance is appropriate in these circumstances is a fact-specific inquiry that will require additional analysis by the Utilities Division Staff. The issues related to the variance will likely remain, even if the takings claims were dismissed.

I became even more hopeful for a quick resolution after I read the above paragraph. The Utilities Division Staff and the Engineering Department has analyzed the inquiry of adding a main extension and new water meters.

After discussing the matter numerous times with Brad Morton, Public Utility Consumer analyst II at the Corporation Commission, he has stated the following statements; A variance is not appropriate since the moratorium allows an exception for a land owner/customer that provides a new independent water source for the proposed extension. Those most current decisions (Decision No. 65435 and 67823) did not delete the exception contained in Decision 64400 but rather omitted changing any of the parameters needed. The two Decisions never said anything about it, so my assistant

director, Steve Olea and everyone in the consumer services agrees that the exception is still in effect.

In December 2005 I specifically wrote a letter asking the Corporation Commission to ask for clarification that a main extension agreement is still allowable when a property owner provides an independent source of water. The return email answer was yes, it would be allowable. (See Complaint Exhibits A & B)

I find words used in the most current Decision # 67823 very interesting. What do the following phrases mean? "shall continue to be in effect" (Page 11, lines 2-7), "all conditions placed ... in previous Commission Decisions ... remain in effect" (Page 13, lines 11-13), and "shall continue to be in effect" (Page 13, lines 14-16). It is apparent that the moratorium for main line extension and new meters was not created anew or altered; but instead is a continuation of the prior moratorium. Thus the exception is still allowable when the property owner provides an independent source of water. This reasoning is explained in my Complaint.

I would like to remind you that it has been my goal from the beginning to use the well in Strawberry to support the proposed subdivision. In the Addendum to Water Sharing Agreement dated September 24, 2004, "Brooke Utilities, Inc. agrees to use its best efforts to assist the well owner in getting the transfer of water completed." (See the addendum, the last page in Complaint Exhibit E). To this point, there is no question in my mind that Brooke Utilities has not used its best efforts to complete this transfer. On the contrary, I have met opposition from Brooke Utilities and Pine Water Company, even in light of the Corporation Commission Utilities Division opinions.

Apparently you have made your own interpretation that since the later two Decisions did not mention the exception by adding a new water source, that Decision 67823 deleted the exception contained in Decision 64400. Mr. Morton said that if you did not contest our interpretation that I could go and start building. I would not have to file with the ACC commissioners. I would simply apply for the Main Extension Agreement with the Corporation Commission Engineering Department.

May I ask the following questions?

Why would you want to take it upon yourself to interpret the ACC's Decisions especially when it is potentially detrimental to you to go by your interpretation?

Why not listen to the staff's interpretations and recommendations?

Why not let the ACC engineering approve the Main Extension Agreement?

Why take your time to litigate complaints?

Why take chances of losing water from wells in your CCN?

Why spend extra legal fees?

Why would you want to expose your company to the public notice of the hearing process?

Why wouldn't you sign a Drinking Water Service Agreement and leave the responsibility to interpret any ACC Decisions to the ACC?

I am willing to sign the Strawberry well over to Brooke Utilities if you will agree to issue a Drinking Water Service Agreement and execute a Main Extension Agreement so that we may bypass the complaint process. Otherwise I will be reluctant to sign the well over to Brooke Utilities if I am forced to file the Complaint.

Mr. Morton and ACC Staff are of the opinion, as am I, that a variance is inappropriate in this situation since correctly interpreted, the controlling Corporation Commission Decisions in fact allow Pine Water to execute a Main Extension Agreement and a Drinking Water Service Agreement since the water supply for the proposed subdivision is a new, independent water source that is more than sufficient to support the subdivision, and therefore outside the scope of the moratorium.

I would prefer to settle this matter short of the formal public process. It would be to both of our benefits not to enter a lengthy and costly process in litigating this matter, especially since I am confident that the decision would in the end result in my favor. I will need to file this Complaint on December 18, 2006 to get the time clock ticking on a resolution. I would rather have you issue ADEQ's Drinking Water Service Agreement and execute the Corporation Commission's Main Extension Agreement for the proposed subdivision.

Feel free to call if you have any questions or input. Like I said on the phone, I would be willing to pay your attorneys fee for reviewing this request. I give you authorization to spend up to \$1,000 in attorney fees.

If you have further questions with the ACC, call the following contacts:  
Brad Morton 602 542-0836 (easiest to reach from 7-8 am)  
Steve Olea 602 542-7270

Regards,

Brent Weekes

Enclosures