ORIGINAL

RECEIVED

2007 MAR 26 A 10: 27

AZ CORP COMMISSION
DOCUMENT CONTROL

19

FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
Patrick J. Black (No. 017141)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone (602)916-5000
Attorneys for Pine Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B. PUGEL AS TRUSTEES OF THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL AND SALLY RANDALL Complainant, v. PINE WATER COMPANY, an Arizona Corporation, Respondent.	DOCKET NO: W-03512A-06-0407
ASSET TRUST MANAGEMENT, CORP., Complainant, v. PINE WATER COMPANY, an Arizona Corporation, Respondent.	DOCKET NO: W-03512A-06-0613 **MOTION TO COMPEL DISCOVERY**

Arizona Corporation Commission
DOCKETED
MAR 26 2007
DOCKETED BY nr

"The purpose of discovery procedure ... is to avoid the element of surprise and prevent the trial of a lawsuit from being a guessing game." *Watts v. Superior Court*, 87 Ariz. 1, 5, 347 P.2d 565, 567 (1959). In this context, Complainants come before the Commission making sweeping accusations. Their complaints accuse Pine Water

Company ("PWCo") of failing to follow the law, failing to meet its obligations, failing to adhere to applicable requirements and failing to follow Commission orders. Complainants' testimonies, while brief, echo these assertions. Yet, in response to PWCo's appropriate inquiries regarding what laws PWCo has broken, what rules and regulations it has abandoned and what orders of the Commission it has ignored, Complainants flippantly object, claiming these discovery requests ask for "conclusions of law".

Seeking to expose the relevant issues in order to facilitate a resolution of this matter on the merits, PWCo compromised and sought Complainants' own personal understanding of the rules and requirements Complainants have brought into issue. Again, Complainants stymied the discovery process and reasserted the same baseless objections. PWCo sought to resolve this issue without involving the Commission by sending a detailed analysis of Complainants' objections and requesting that Complainants withdraw their objections. [*See* Letter from Jay L. Shapiro to John G. Gliege, dated March 22, 2007, attached as Exhibit A]. Complainants flatly ignored PWCo's correspondence. Complainants' obstinate refusal to respond to PWCo's legitimate discovery requests has regrettably forced PWCo to bring this Motion to Compel.

PWCo respectfully requests the Commission order Complainants to respond to PWCo's attached Data Requests. [*See* Fourth and Fifth Sets of Data Requests from PWCo to Complainants, attached as Exhibit B and C, respectively]. The following Memorandum of Points and Authorities supports this Motion to Compel.

MEMORANDUM OF POINTS AND AUTHORITIES

In ordering responses to discovery requests, Arizona courts only ask "whether an answer to the interrogatories would serve any substantial purpose, either in leading to evidence or narrowing the issues." *State v. Whitman*, 91 Ariz. 120, 124, 370 P.2d 273, 277 (1962). Indeed, "[a]n interrogatory ... is not necessarily objectionable merely

because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact...." Ariz. R. Civ. P. 33(b); *see Sigmund v. Starwood Urban Retail VI, LLC*, 236 F.R.D. 43, 46 (D.D.C. 2006) ("an admission of a matter involving the application of law to fact may, in a given case, even more clearly narrow the issues.") (citations omitted). This comports will the well-settled rationale behind discovery: "[p]roper use of discovery [ ] facilitates settlement, makes trials more efficient, and helps insure that verdicts are based on fact rather than on confusion or surprise." *Kott v. City of Phoenix*, 158 Ariz. 415, 418, 763 P.2d 235, 238 (1988). Disregarding this broad mandate for the liberal use of discovery, Complainants have casually objected to numerous data requests without support or explanation and notwithstanding that the burden of proof for sustaining any objections to discovery requests falls to them. *See Hine v. Superior Court*, 18 Ariz. App. 568, 571, 504 P.2d 509, 512 (1972). Lacking answers to the data requests in dispute, PWCo cannot adequately prepare for this matter, making surprise and confusion a likely factor in the outcome of Complainants' claims.

I. COMPLAINANTS' "CONCLUSION OF LAW" OBJECTIONS MUST FAIL.

In its Fourth and Fifth Sets of Data Requests, PWCo sought numerous items of information to which Complainants objected because the discovery supposedly sought "conclusions of law."[1] In particular, Complainants objected to the following data requests on the basis that they sought "conclusions of law":

[1] PWCo acknowledges that historically, a party could object to discovery on the basis that it sought conclusions of law under the Federal Rules of Civil Procedure. In 1970, however, the rules were amended to permit interrogatories directed at the application of law to fact. *See* Fed. R. Civ. P. 33(b); *see also* Ariz. R. Civ. P. 33(b) (containing identical language to its federal counterpart). "Today, there is no doubt that the federal rules allow a litigant to require an opponent to answer interrogatories asking for a delineation of legal theories so long as the question is calculated to serve a 'substantial purpose' in prosecution of the suit, such as narrowing of issues." *Hockley v. Zent, Inc.*, 89 F.R.D. 26, 31 (M.D. Pa. 1980).

- In Data Request 4.1(a) PWCo requested that Complainants "[i]dentify all rules, regulations, statutes or other laws or orders that require [PWCo] to provide a 100-year adequacy for development within its CC&N".
- In Data Request 4.1(b) PWCo requested Complainants "[i]dentify all rules, regulations, states or other laws or orders that require [PWCo] to provide 'adequate fire protection' for development within its CC&N".
- In Data Request 4.5, PWCo requested Complainants define the term "reasonable rates" as used in Complainants' claim that PWCo cannot deliver water at 'reasonable rates'.
- In Data Request 4.6 PWCo asked Complainants if PWCo's "existing ratepayers have to pay a return on and of plant built (sic) solely to serve the extension of service to one or more of the Complainants' properties".
- In Data Request 4.11 PWCo requested that Complainants "identify all applicable rules and regulations or industry standards concerning the amount [of] storage [PWCo] should have in its water system".
- In Data Request 5.4 PWCo asked Complainants how the "development of an RV Park benefit[s] the public interest".
- In Data Request 5.5 PWCo asked how the "development of a multi-unit residential dwelling development (i.e. a Town Home or Condominium) benefit[s] the public interest".
- In Data Request 5.10(e) PWCo requested that Complainants "[a]dmit that advances in aid of construction are refundable".

[*See* Fourth and Fifth Sets of Data Requests, Exhibits B and C, respectively]. To each of these data requests, Complainants objected, claiming that PWCo impermissibly sought "conclusions of law." This objection, however, does not provide legitimate grounds for Complainants to avoid their discovery obligations.

A "request may properly ask for an admission on a matter of opinion as well as matters involving mixed law and fact." *West v. Sundance Dev. Co.*, 169 Ariz. 579, 585, 821 P.2d 240, 246 (App. 1991); *see* Ariz. R. Civ. P. 33(b). In *West*, the plaintiff requested the defendant admit numerous so-called "conclusions of law". *West*, 169 Ariz. at 585, 821 P.2d at 246. The defendant objected to these requests, claiming that they impermissibly sought "ultimate conclusions", i.e. conclusions of law. *Id.* The court

rejected this objection, noting that the Arizona State Bar Committee Note to the 1970 Amendment makes "it clear that [a] request may properly ask for an admission on a matter of opinion as well as matters involving mixed law and fact." *Id.*; *see Wagner v. St. Paul Fire & Marine Ins. Co.*, 238 F.R.D. 418, 428 (N.D. W. Va. 2006) (rejecting plaintiff's objection that an interrogatory impermissibly sought a conclusion of law because Rule 36 specifically permits interrogatories requesting the application of law to fact). The court noted that a party may properly ask for admissions involving a parties' understanding of the law, including whether an employee was acting within the scope of his employment or that a party controlled its premises. *West*, 169 Ariz. at 585, 821 P.2d at 246.

Here, Complainants have improperly objected to the data requests recited above, each of which reflects PWCo's effort to understand Complainants' application of law to facts, specifically as brought into issue in the case most recently by Complainants' direct testimony. For example, in his direct testimony, Mr. Pugel testifies that PWCo "cannot supply a 100 year assured supply nor a supply of water for fire protection." Pugel DT at 4, ls. 9-12. Similarly, Mr. Pugel, and Mr. Moriarity on behalf of Complainant ATM, testified that PWCo cannot provide water service at "reasonable rates". Pugel DT at 3, ls. 5-7; Moriarity DT at 2, l. 28 - 3, l. 2. Again, despite this and other testimony giving rise to PWCo's discovery, Complainants refuse to answer asserting that such discovery seeks conclusions of law.

"An interrogatory is not objectionable merely because it involves an opinion, contention or legal conclusion." *Diversified Prod. Corp. v. Sports Center Co.*, 42 F.R.D. 3, 4-5 (D. Md. 1967). Interrogatories may permissibly inquire into the law a party bases their claims upon. *See Twigg v. Pilgrim's Pride Corp.*, 2007 WL 676208, *12 (N.D. W. Va.) (slip copy) (holding that defendant improperly objected to interrogatory requesting identification of law defendant relied upon in forming its good faith defense).

Complainants provided no authority for their objections, and indeed, none exists. As discussed above, well-settled law in Arizona permits the exact type of discovery requests PWCo propounded to Complainants and Complainants inexplicably refused. PWCo respectfully requests the Commission order Complainants to respond to Requests 4.1(a) & (b), 4.5 4.6, 4.11, 5.4, 5.5, and 5.10(e).

II. COMPLAINANTS' OTHER OBJECTIONS ALSO LACK MERIT.

Beyond claiming that certain discovery requests call for conclusions of law, Complainants asserted additional objections that likewise do not provide a valid basis to object to a discovery request.

A. The Objection that a Commission Order "Speaks for Itself" is Improper.

Complainants improperly object to PWCo's Data Request 4.9. PWCo requested Complainants identify a previously unidentified Commission Order that they had relied upon in their own responses to PWCo Data Request 2.15. PWCo asked Complainants to emphasize those portions of the unidentified order "that Complainants contend direct [PWCo] to take action that has not been taken." [Fourth Set of Data Requests, Request 4.9, Exhibit B]. Complainants objected, claiming that the Order "speaks for itself." [*Id.*]. This is not a valid objection.

"[O]bjections that documents or regulations speak for themselves ... are improper." *Diederich v. Dep't of the Army*, 132 F.R.D. 614, 617 (S.D.N.Y. 1990). A party may permissibly seek the other "party's understanding of a document's meaning or the intent of the parties as otherwise a party that does not intend to dispute such matters could refuse to answer thus requiring needless proof." *Booth Oil Site Admin. Group v. Safety-Kleen Corp.*, 194 F.R.D. 76, 80 (W.D.N.Y. 2000) (holding that Rule 36 authorizes "a request directed to another party seeking admission or denial of a document's meaning

or intent....”). Complainants’ objection to PWCo’s Data Request 4.9 should be rejected and Complainants ordered to respond.

B. Complainants’ “Public Interest” Objections Must Also Fail.

Complainants erroneously object to Data Requests 5.4 and 5.5, first on the basis that PWCo failed to define “public interest.”[2] [*See* Fifth Set of Data Requests, Requests 5.4 and 5.5, Exhibit C]. However, PWCo did define the term “public interest.” In a cover letter sent with its Fifth Set of Data Requests, PWCo defined “public interest” as having “the same meaning as Complainants’ intended meaning in Complainants’ Response to [PWCo’s] Objections to Complainants’ Interrogatories, Requests for Production of Documents and Request for Admissions.” [*See* Letter from Jay L. Shapiro to John G. Gliege, dated March 19, 2007, attached as Exhibit D]. In fact, in various responses to objections flowing from Complainants’ discovery request to PWCo, Complainants used the phrase “public interest” no less than 11 times.

In formulating Data Requests 5.4 and 5.5, PWCo explicitly relied upon the meaning Complainants attached to that term in an effort to avoid a dispute over the meaning of the term and in order to develop an understanding of Complainants’ claims. Given Complainants’ repeated reliance on the term “public interest”, and PWCo’s definition, Complainants’ refusal to answer Requests 5.4 and 5.5 is improper. Thus, PWCo respectfully requests the Commission order Complainants to respond to PWCo’s Data Requests 5.4 and 5.5.

III. CONCLUSION

PWCo sought to avoid this Motion to Compel by writing to Complainants and seeking resolution of Complainants’ objections. Complainants stood by their objections and refused to answer. Complainants’ objections lack merit and conflict with well-settled

[2] As noted above, Complainants also objected to Requests 5.4 and 5.5 on the basis that they sought conclusions of law.

principles of Arizona law.[3] Because Complainants have not stated valid objections to PWCo's legitimate Data Requests, PWCo respectfully requests the Commission order Complainants to respond to Requests 4.1(a) & (b), 4.5 4.6, 4.9, 4.11, 5.4, 5.5, 5.10(e), 5.12(f) and 5.13. In addition, to the extent necessary, PWCo also seeks adjustments to the procedural schedule in this case to account for the delay caused by Complainants' failure to timely respond to legitimate discovery.

RESPECTFULLY SUBMITTED this 26th day of March, 2007.

FENNEMORE CRAIG, P.C.

By_____

Jay L. Shapiro
Patrick J. Black
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Pine Water Company

ORIGINAL and thirteen (15) copies of the foregoing filed this 26th day of March, 2007:

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

[3] Because Complainants' objections lack any good faith basis in Arizona law, PWCo notes that in an action pending before an Arizona Superior Court, PWCo would be entitled to an award of fees incurred in filing this Motion to Compel. *See* Ariz. R. Civ. P. 11(a); *see also* Ariz. R. Civ. P. 37(a).

Copy of the foregoing hand delivered
this 26th day of March, 2007 to:

Dwight D. Nodes
Assistant Chief Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Kevin Torrey
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPIES mailed
this 26th day of March, 2007 to:

John G. Gliege
Stephanie J. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

By: Maria San Jose

1897658.2/75206.010

Exhibit A

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) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

March 22, 2007

Via Electronic Mail
and U.S. Regular Mail

John G. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

Re: Pine Water Company; Docket Nos. W-03512A-06-0407 and W-03512A-06-0613 consolidated; Discovery Issues

Dear John:

We are in receipt of Complainants' Objections to Pine Water Company's 4th and 5th sets of data requests. Essentially, your objections fall into 3 general categories: (1) Conclusions of Law; (2) No Definition of "Public Interest"; and (3) Lack of Data on SH3 Well. There is also the objection to data request 4.9, which does not fall into any of these categories, and which I will address separately.

As you know from our earlier email correspondence, I do not believe the first two bases are appropriate bases upon which to object. Indeed, since you have accused me of "churning" my client's bill, I consulted with two other lawyers, one in my firm and one outside my firm, and both expressed a similar view regarding the validity of these objections. In short, both agreed that your objections are not valid objections. Accordingly, before filing a motion to compel, I provide this formal response in an effort to avoid bringing this discovery dispute to the Commission.

Specifically, your "Conclusion of Law" objections to data requests 4.1(a), 4.1(b), 4.5, 4.6, 4.11 and 5.10(e) are unfounded. In Complainants' direct testimonies, the following Q&A were submitted among others:

Moriarity DT

Q. Because Pine Water Company was not able to provide ATM with water at a reasonable rate, what steps has ATM taken to acquire water for the property.

A. ATM has located water that can be purchased and supplied to the property in question (Eagle Glen Town homes).

Pugel DT

Q. In order to develop your property and for you and others to use and enjoy the property you are required to have domestic water service to the property?

A. Yes.

Q. Because Pine Water Company was not able to provide you adequate water service at a reasonable rate, what steps did you take to acquire water for your property?

A. We drilled a well.

Q. So, is it your understanding that in order to get water from the Pine Water Company you must provide to them the infrastructure to deliver the water, and the water out of your well?

A. Yes.

Q. Have they made an offer to pay you for this water?

A. No.

Q. So essentially, if you were to construct a home for yourself on your property in order to be served by Pine Water Company you would have to give them the water and the well, and the infrastructure so that they could charge you and make a profit from selling you water. Is that your understanding of this situation?

A. Yes.

Q. Pine Water Company is presently operating under certain water usage restrictions. If you were to turn your well over to Pine Water Company, and obtain service from them, is it your understanding that you would also be subject to these service restrictions?

A. Yes.

Q. In your opinion would having your property served by Pine Water Company, subject to the service restrictions of Pine Water Company detract from the value of your property, compared with having unrestricted water available from the Milk Ranch Well?

A. Yes, because Pine Water Company cannot supply a 100 year assured supply nor a supply of water for fire protection.

Similarly, in response to our data request No. 2.7, "Pugel et al" claimed that Pine Water Company has "inadequate storage facilities."

You have not offered any authority for your position that it is inappropriate to inquire about legal theories or applicable laws and regulations. We believe such discovery is fairly sought, especially since it is your clients that have made the allegations concerning what is required of Pine Water Company as a public service corporation and why Pine Water Company cannot meet its legal obligations. These are not just allegations in a complaint, rather, this is testimony intended to be adopted under oath and data request responses authored by your clients. It is perfectly appropriate for Pine Water Company to test that testimony and those allegations. Nevertheless, you are attempting to block that effort with meritless objections. Accordingly, we hereby respectfully request that you withdraw the objections to data requests 4.1(a), 4.1(b), 4.5, 4.6, 4.11 and 5.10 (e) and timely respond. If your clients wish to qualify that they are not legal experts and are answering based on their own understanding, we would have no objection.

Regarding data requests 5.4 and 5.5, you first objected that the term "Public Interest" is not defined. This is wrong. In the cover letter submitting the 5th set of data requests we defined "public interest" in the same manner as you used the terms some 15 different times in connection with Complainants' three sets of discovery requests to Pine Water Company. Then, after I pointed out that the terms were defined, you claimed that such requests call for a conclusion of law. For the same reasons identified above in connection with data requests 4.1(a), 4.1(b), 4.5,

4.6, 4.11, and 5.10 (e), we respectfully request that Complainants timely answer data requests 5.4 and 5.5.

Regarding data requests 5.12 (b)-(f), and 5.15, we will accept Complainants' objections if Complainants will agree to answer the following requests for admission:

> Admit that Complainants lack any information regarding the SH3 LLC well identified in the Direct Testimony of Edward Moriarity from which the potential production of the well can be determined.
>
> Admit that Complainants lack any information from which it can be determined whether the SH3 LLC well has sufficient production to serve ATM's planned development.

Lastly, regarding data request 4.9, it was the Complainants, in responding to Company data request 2.15, that contended that Pine Water Company has failed to take action required under Decision 67823. It is groundless to then assert, in response to a request to identify what actions Pine Water Company was required to take but has not, that the Commission decision "speaks for itself." Therefore, we respectfully request that you withdraw your objection and timely answer this data request.

It is our hope that this effort will result in a resolution of this discovery dispute without the filing of a motion to compel and the involvement of the Presiding ALJ. Judge Nodes urged us to cooperate, and the applicable rules require the same. My client and I have tried to be cooperative in resolving discovery disputes, and have hereby made one more effort to do so before having to make a filing at the Commission. We urge you and your clients to join in that cooperative effort by withdrawing the objections identified herein. We request your response no later than 3 pm, Friday, March 23, 2007. This short deadline is necessary given the rapidly approaching deadline for Pine Water Company to make its direct filing.

Very truly yours,

Jay L. Shapiro

cc: Robert T. Hardcastle
Kevin Torrey
David Davis

1897349.1/75206.010

Exhibit B

FOURTH SET OF DATA REQUESTS
FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.
W-03512A-06-0407 and W-03512A-06-0613 (consolidated)

4.1 In response to Company data request 2.7, Complainants state that the Company cannot "provide a 100 year adequacy or adequate flow for fire protection." Regarding this claim, please

a. Identify all rules, regulations, statutes or other laws or orders that require Company to provide a 100-year adequacy for development within its CC&N.

b. Identify all rules, regulations, statutes or other laws or orders that require Company to provide "adequate fire protection" for development within its CC&N.

c. State whether a 100-year water adequacy required for development of any of the Complainants' properties?

d. Identify any public service corporations known to Complainants that provide applicants for an extension of water utility service a 100-year adequacy statement?

e. Identify any public service corporations known to Complainants that provide applicants for an extension of water utility service an assurance of fire flow protection?

4.2 Please explain the basis for Complainants' claim in response to Company data request 2.7 that Company has "inadequate storage".

4.3 Is it Complainants' position that their properties, now or when developed, should not be subject to conservation requirements such as the Curtailment Tariff in effect in Company's CC&N?

4.4 Admit that in response to Complainants' Request for Admission No. 19, the Company offered ATM a will serve letter similar to that already offered to Complainants Pugel and Randall.

4.5 Complainants repeatedly refer to Company's inability to deliver water at "reasonable rates". What constitutes "reasonable rates"?

4.6 Should Company's existing ratepayers have to pay a return on and of plant built solely to serve the extension of service to one or more of the Complainants' properties?

4.7 Has Company ever stated, represented or required that Complainants construct plant before Company was granted a variance to the Commission's prohibition on new connections and main extensions?

4.8 Please identify the two deep wells referred to in Complainants' response to Company data request 2.14 and provide documentation supporting Complainants' claims regarding the success of these two well projects.

4.9 In response to Company data request 2.15, Complainants' reference an unidentified Commission order. Please identify the order referred to and the portions of the order that Complainants contend direct Company to take action that has not been taken.

4.10 Please explain what a "realtor and sand and gravel provider" accomplished in 2 years that Company has not accomplished in 11 years as claimed in response to Company data request 2.15.

4.11 Please identify all applicable rules and regulations or industry standards concerning the amount storage the Company should have in its water system.

4.12 How could the Company develop its CAP water allocation to augment water supplies in its CC&N as alleged by Complainants in response to Company data request 2.17.

1895711.1

Exhibit C

FIFTH SET OF DATA REQUESTS
FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.
W-03512A-06-0407 and W-03512A-06-0613 (consolidated)

5.1. How will wastewater collection and treatment, electric, gas, telecommunications and other utility services be provided for Complainants' properties?

5.2. Regarding the response to data request 5.1, will Complainants pay any costs for wastewater collection and treatment infrastructure or infrastructure associated with the extension of any other utility service to Complainants' properties?

5.3. Admit that the none of the Complainants have received development plan approval since 1986.

5.4. How does development of an RV Park benefit the public interest?

5.5. How does development of a multi-unit residential dwelling development (i.e., a Town Home or Condominium) benefit the public interest?

5.6. How does either development identified in response to data requests 5.5 and 5.6 promote the sustained use of water supplies in the Pine, Arizona area?

5.7. Admit that Complainants intend to make a profit on the development of their property.

5.8. What return on investment do Complainants stand to make from the planned development of their properties to an RV Park, a 40-unit condominium project, and a 43-unit Town Home Development?

5.9. In his direct testimony at page 3, Mr. Pugel expresses a belief that the Milk Ranch Well has sufficient water to allow for development of his property. Regarding such testimony, please explain

a. The meaning of the terms "sufficient water".

b. The basis for this testimony based on the witness's own personal knowledge and information.

5.10. In his direct testimony at page 3-4, Mr. Pugel testifies that Pine Water Company is requiring him to "give" the Company water and a well and infrastructure. With respect to such testimony

a. Does "give" mean provide, at no cost, free of charge, with no obligation of repayment? If not, what is meant by the term?

b. What is the basis for Mr. Pugel's testimony that he is required to "give" water, a well and infrastructure to the Company?

c. Admit that the Company has offered to negotiate an extension agreement with Mr. Pugel pursuant to AAC R14-2-406.

d. Admit that the Company has informed Mr. Pugel that infrastructure he would be required to convey and/or finance would be treated as either an advance or a contribution in aid of construction.

e. Admit that advances in aid of construction are refundable.

5.11. When did Mr. Pugel or his spouse, or any entity they control or own, in whole or in part, acquire the property or properties that are the subject of this proceeding?

5.12. With respect to SH3, LLC, please

a. Identify the ownership of this entity.

b. Identify all water sources owned by this entity, including Maps and ADWR Well Registration Nos.

c. How much water has each well owned by SH3 LLC produced in each of the past three years.

d. How many customers does SH3 LLC provide water to?

e. How much water was used by SH3 LLC's customers as identified in response to the prior data request?

f. Provide copies of all contracts and other documents related to an agreement to purchase water between SH3 LLC and ATM.

g. Provide copies of all information in Complainants' possession regarding the hydrology, drilling, and production of the SH3 LLC wells that will be used to serve ATM's development.

5.13. Admit that SH3 LLC is neither a public service corporation regulated by the Arizona Corporation Commission nor a political subdivision of the State of Arizona.

5.14. In his direct testimony at page 3, Mr. Moriarity expresses a belief that SH3 LLC has sufficient water to allow for development of ATM's property. Regarding such testimony, please explain

a. The meaning of the terms "sufficient water".

b. The basis for this testimony based on the witness's own personal knowledge and information.

5.15. Please provide a copy of the 100 year adequacy supply determination made by ADWQ, or any other agency of the State of Arizona for the SH3 Well as testified to by Mr. Moriarity.

5.16. Please provide all data, information and explanation to support Mr. Moriarity's testimony (direct testimony at 3) that the SH3 Well has "a solid history of surplus".

5.17. Please provide a resume or CV for Michael Ploughe.

5.18. Has Mr. Ploughe previously testified before the Commission? If so, please identify the case, decision or docket number.

5.19. Has Mr. Ploughe previously testified in any other legal proceedings not identified in response to the previous data request? If so, please identify such proceedings and provide copies of such testimony.

5.20. In his testimony Mr. Ploughe states that he has prepared numerous reports on the topic of the domestic water situation in Pine, Arizona. Please provide copies of every such report Mr. Plough prepared, as well as copies of any reports prepared by others that Mr. Ploughe has relied upon in rendering opinions on the domestic water supply situation in Pine, Arizona.

5.21. Mr. Ploughe testifies that the SH3 Well is close enough to the Pine Water system to make connection in a "cost efficient manner". Please explain the bases for Mr. Ploughe's testimony, including a showing of the relative location of the Company's existing facilities, the point of interconnection and provide a copy of the engineering, design and facilities cost estimates that form the bases for his testimony.

5.22. Mr. Ploughe testifies that the Milk Ranch Well is close enough to the Pine Water system to make connection in a "cost efficient manner". Please explain the bases for Mr. Ploughe's testimony, including a showing of the relative location of the Company's existing facilities, the point of interconnection and provide a copy of the engineering, design and facilities cost estimates that form the bases for his testimony.

5.23. Admit that the only basis identified by Complainants for Pine Water Company being unable to serve their properties is the moratoria currently in effect pursuant to Commission Decision No. 67823.

5.24. Do the Randalls have any plans for development of their properties that are subject to this proceeding? If yes, please provide all information regarding development of such property, including water use, to the extent such plans differ from those testified to by Mr. Pugel.

1895747.1

Exhibit D

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) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

March 19, 2007

Via Electronic and U.S. Mail

John G. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

Re: Pine Water Company – Fifth Set of Data Requests; Docket Nos. W-03512A-06-0407 and W-03512A-06-0613 (consolidated)

Dear Mr. Gliege:

Enclosed is Pine Water Company's ("Pine Water") Fifth Set of Data Requests to Raymond R. Pugel and Julie B. Pugel, Robert Randall and Sally Randall, and Asset Trust Management Corp. ("Complainants") in the above-referenced consolidated docket numbers.

As always, the Company's instructions to earlier data requests in this proceeding are being incorporated herein by this reference, and further, all data requests are intended to be continuing in nature. Accordingly, Complainants are requested to supplement prior responses if they receive or generate additional information, reports or other data within the scope of any of the Data Requests between the time of the original response and the hearing.

The term "public interest" should have the same meaning as Complainants' intended meaning in Complainants' Responses to Company's Objections to Complainants' Interrogatories, Request for Production of Documents and Request for Admissions.

With regard to the due date of the responses for this Fifth Set of Data Requests, I realize that this issue remains unresolved. Again, I ask that you confirm our earlier agreement to a shorter response time for discovery at this stage of the Proceeding.

Please direct one copy of your responses as well as the documents responsive to these requests directly to each of the following:

1. Jay Shapiro, Attorney, Fennemore Craig, 3003 N. Central Avenue, Suite 2600, Phoenix, AZ 85012, and via email to: jshapiro@fclaw.com

2. Robert T. Hardcastle, Pine Water Company, 3101 State Road, Bakersfield, California, 93308.

If you have any questions please do not hesitate to contact me at any time.

Very truly yours,

Jay L. Shapiro

Enclosure

cc: Mr. Robert T. Hardcastle (w/encl.)
Mr. Kevin Torrey (w/encl.)
Mr. David Davis (w/encl.)

1895844.1/75206.010