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2007 MAR 30 A 11: 27
 AZ CORP COMMISSION
 DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

9 RAYMOND R. PUGEL AND JULIE B.
 10 PUGEL AS TRUSTEES OF THE
 11 RAYMOND R. PUGEL AND JULIE B.
 12 PUGEL FAMILY TRUST, and ROBERT
 13 RANDALL AND SALLY RANDALL

DOCKET NO: W-03512A-06-0407

Complainant,

v.

14 PINE WATER COMPANY, an Arizona
 15 Corporation,

Respondent.

Arizona Corporation Commission
DOCKETED

MAR 30 2007

DOCKETED BY

nr

17 ASSET TRUST MANAGEMENT, CORP.,
 18

DOCKET NO: W-03512A-06-0613

Complainant,

v.

20 PINE WATER COMPANY, an Arizona
 21 Corporation,

Respondent.

REQUEST FOR PROCEDURAL CONFERENCE

24 On Monday, March 26, 2007, Respondent Pine Water Company ("PWCo") filed a
 25 Motion to Compel. Thereafter, PWCo's counsel contacted the Hearing Division per the
 26 January 16, 2007 Procedural Order to request a Procedural Hearing on the motion. At this

1 juncture, it is critical for the Assistant Chief Administrative Law Judge to resolve these
2 issues because PWCo cannot adequately prepare its direct filing due April 13, 2007.

3 Unfortunately, in addition to the issues addressed in the Motion to Compel, several
4 other discovery disputes have arisen. For instance, Complainants have refused to answer
5 certain data requests because Complainants believe that PWCo has exceeded the limits on
6 the number of discovery requests set forth in the Arizona Rules of Civil Procedure. Yet,
7 parties to Commission proceedings, including Commission Staff, routinely propound sets
8 of data requests in excess of those presumptive limits without objection. This
9 consolidated docket with multiple complainants should not be the exception to that
10 practice. Additionally, Complainants have continued to assert groundless objections to
11 the Company's data requests.¹

12 Despite PWCo's efforts to reach resolution of every discovery dispute without
13 judicial intervention, these and other discovery disputes remain and now threaten PWCo's
14 ability to file its direct testimony as ordered on April 13, 2007. Much of PWCo's
15 discovery was necessitated by the lack of information to support Complainants'
16 allegations in their direct testimony. Now, coupled with Complainants' objections to
17 discovery, PWCo is forced to suggest that it appears that Complainants are conducting
18 this case as a "trial by ambush" without disclosure of their underlying facts or legal
19 theories. Of course, in fairness, Complainants have raised discovery concerns of their
20 own, including the accusation that PWCo is using discovery to create "chaos" and delay
21 these proceedings.

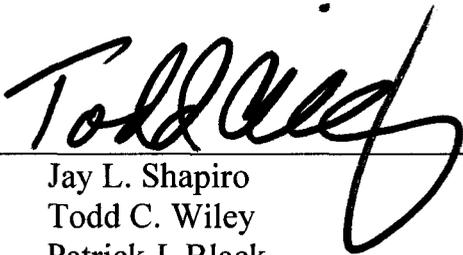
22 For these reasons, PWCo respectfully requests that the Assistant Chief
23 Administrative Law Judge set a procedural conference to address the several discovery

24 _____
25 ¹ Attached hereto as Attachment A is a copy of the Company's Sixth Set of Data Requests
26 to Complainants, with Complainants' objections. Attachment B is an e-mail exchange
between counsel regarding Complainants' position on discovery limits and regarding
Complainants' objections to PWCo's Sixth Set of Data Requests.

1 disputes *as soon as possible*, including the Motion to Compel. At that time, PWCo also
2 asks that consideration be given to whether modification of the current procedural
3 schedule, including the scheduled hearing dates, is warranted.

4 RESPECTFULLY SUBMITTED this 30th day of March, 2007.

5 FENNEMORE CRAIG, P.C.

6
7
8 By 
9 Jay L. Shapiro
10 Todd C. Wiley
11 Patrick J. Black
12 3003 North Central Avenue
13 Suite 2600
14 Phoenix, Arizona 85012
15 Attorneys for Pine Water Company

16 ORIGINAL and thirteen (15) copies of the
17 foregoing filed this 30th day of March, 2007:

18 Docket Control
19 Arizona Corporation Commission
20 1200 W. Washington St.
21 Phoenix, AZ 85007

22 Copy of the foregoing hand delivered
23 this 30th day of March, 2007 to:
24 Dwight D. Nodes
25 Assistant Chief Administrative Law Judge
26 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

1 Kevin Torrey
2 Legal Division
3 Arizona Corporation Commission
4 1200 West Washington
5 Phoenix, Arizona 85007

6 COPIES mailed, faxed and emailed
7 this 30th day of March, 2007 to:

8 John G. Gliege
9 Stephanie J. Gliege
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13

14 By: *Maria San Jose*

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Attachment A

OBJECTIONS TO SIXTH 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)

March 27, 2007

- 6.1. Is it Complainants' position that Pine Water Company must find additional water supplies to serve customers at any cost?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.2. Please provide a copy of the development plan referred to on page 3 of the direct testimony of Mr. Moriarity.
- 6.3. Please provide the cost of drilling and equipping the Milk Ranch Well and please provide documentation supporting such costs. If Complainants believe all documents responsive to this question have already been provided, please specify which documents previously provided apply.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.4. Please provide information, test results, and/or documentation regarding the determination of the long-term yield of the Milk Ranch well beyond the tested rate. If Complainants believe all documents responsive to this question have already been provided, please specify which document previously provided applies.
- 6.5. Regarding the facilities referred to in Mr. Ploughe's direct testimony (at p. 4) as being within close proximity (30 feet) of the Milk Ranch Well, please
- a. Provide any maps or diagrams or other documents in Complainants' possession showing the location of the Milk Ranch Well in relation to the facilities referred to in Mr. Ploughe's direct testimony.
 - b. State the actual location, size and configuration of the facilities referred to in Mr. Ploughe's testimony.
 - c. State the estimated size and capacity of the facilities that will be needed to interconnect the Milk Ranch Well to Pine Water's system.
 - d. State the estimated size and capacity of the facilities that will be needed to interconnect the SH3 well to Pine Water's system.

- e. State a basis or bases for believing any such facilities are owned, controlled, or operated by Pine Water Company.
 - f. State the basis for believing that any such facilities represent a source of distribution that is properly sized, possesses the proper pressure capability, and is mechanically reliable to act as a source of distribution for any high capacity water distribution lines.
 - g. State the basis for believing that any such facilities are, or are not, directly connected to main piping or water storage facilities of any water system in Pine, Arizona.
- 6.6. If granted deletion from Company's CC&N, will ATM be providing "domestic water service" to ATM's property as such term is used in Mr. Moriarity's direct testimony (at p. 2)?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.7. If ATM will not be providing domestic water service to its property, what person or entity will be providing such service?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.8. If ATM will be providing domestic water service to its property following deletion from Company's CC&N, will water purchased under the Water Purchase Agreement between ATM and SH3 LLC be the sole source of water supply? If not, please identify all other supplies.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.9. Concerning the Water Purchase Agreement between ATM and SH3 LLC, please state, explain or identify:

- a. The persons and/or properties to which ATM, as Water Distributor, will distribute water purchased under the Water Purchase Agreement.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- b. The water utility service provider that will serve the water.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

c. How the cost of water under the Water Supply Agreement was determined?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

d. How it was determined that 326,980 gallons of water per month would be sufficient to serve the persons and properties identified in response to data request 6.9 (a)?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

e. Who will finance Water Distributor's water system?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

f. Who will own and operate Water Distributor's water system?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

g. What experience does ATM have operating a water system?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

h. What experience does ATM have testing water supplies for compliance with applicable federal, state and local laws and regulations?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

i. What experience does ATM have installing and/or operating backflow prevention devices?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

j. What assurance does ATM have that it will be provided water in an amount sufficient to meet the demand of its planned development?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- k. How will the rates for water provided by ATM as Water Distributor be determined?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- l. What provisions have been made by ATM for water supplies should SH3 LLC terminate the Water Purchase Agreement in accordance with Section 10.C?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- m. What public water system authority does SH3 LLC have to provide water to others?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.10. Admit that Complainants do not have information regarding current or historical water production from the SH3 LLC well.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.11. Admit that Complainants do not have information from which it can be determined that the SH3 LLC well has sufficient water supply to serve ATM's planned development.

- 6.12. Regarding the Milk Ranch Well, please

- a. Provide the identification of the well driller(s) providing services at the Milk Ranch well.

OBJECTION: THIS INFORMATION HAS BEEN PREVIOUSLY PROVIDED.

- b. Other than the drilling contractor(s) identified in 6.12 (a) above, what other drilling contractors were considered to provide drilling services for the Milk Ranch well?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- c. What basis was used for choosing the well drilling contractor(s) identified in 6.12(a)?

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

d. Please provide copies of all well driller logs from the drilling at the Milk Ranch Well.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

6.13. Please provide a copy of the "main extension" referred to in Mr. Moriarity's direct testimony (at p. 2).

6.14. With regard to ATM's proposed water connection to SH3 LLC, please provide all documents related to the water system interconnection between the two water systems or properties, including, without limitation:

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- a. Map indicating the point of interconnection.
 - b. Routing of water system piping interconnection between SH3 LLC and ATM.
 - c. Size of piping to be interconnected.
 - d. Engineering analysis indicating the properly calculated size of interconnected piping between the water systems.
 - e. ATM's authority, if any, to operate a water distribution system in a public right-of-way or Gila County road within the ATM property.
 - f. SH3 LLC's authority, if any, to operate a water distribution system in a public right-of-way or Gila County road outside of the SH3 LLC property.
 - g. Copies of the required Gila County Franchise Agreement to install, operate, maintain, and repair public water system distribution lines within the ATM property or outside the ATM property connected from SH3 LLC property.
 - h. Any documents related to SH3 LLC's or ATM's application for a Gila County Franchise Agreement to install, operate, maintain, or repair public water distribution lines within the ATM property or between the ATM and SH3 LLC properties.
- 6.15. Admit that Complainants have neither begun, nor completed, the process of obtaining a Gila County Franchise Agreement for installation, maintenance, and operation of a public water distribution system between the SH3 LLC and ATM properties.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.16. When did ATM acquire the Eagle Glen project and property?
- 6.17. Admit that during some of the time the Eagle Glen project and property were owned by ATM, the Commission permitted the installation of up to twenty-five (25) water meters per month.
- 6.18. Did ATM ever attempt to place its name on the PWCo meter waiting list?
- 6.19. With regard to the Milk Ranch well, please provide, with specificity, and provide all supporting documentation:

OBJECTION ASKED AND ANSWERED: OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- a. The deep water source of supply of the Milk Ranch well.
 - b. Any analysis or conclusion as to the down stream aquifer water rights or claims holders that might be adversely affected by extended use of the Milk Ranch well.
 - c. Any analysis as to what extent and why such down stream aquifer water rights or claims holders may, or may not, be adversely affected by the use of the Milk Ranch well.
 - d. Identify all down stream aquifer water rights or claim holders from which the Milk Ranch well might divert water.
 - e. Proof that the deep water source of the Milk Ranch well will support the long term projected demand of the Milk Ranch well without adverse effect.
- 6.20. Admit that the deep water source of the Milk Ranch well is not connected to an aquifer that might drain into Fossil Springs.

OBJECTION: . Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

- 6.21. Have Complainants discussed the use of the Milk Ranch well with the U.S. Forest Service Tonto National Forest, U.S. Forest Service Coconino National Forest, Salt River Project, or any other third parties? If so, please provide copies of all communication, if any, and indicate the result of such communication.

OBJECTION: Irrelevant, vague and ambiguous. Does not provide information regarding an issue in this case nor lead to the discovery of information relevant to this case.

Attachment B

SAN JOSE, MARIA

From: SHAPIRO, JAY
Sent: Tuesday, March 27, 2007 12:59 PM
To: 'JOHN G. GLIEGE'
Cc: Kevin Torrey (ktorrey@azcc.gov); WILEY, TODD; Robert T. Hardcastle (rth@brookeutilities.com); sdurocher@gliege.com; rreaves@gliege.com; Ray Pugel; edwardm
Subject: RE: Sixth Set of Data Requests
Importance: High

John--we have carefully reviewed and considered Complainants' objections to Pine Water's 6th set of data requests. For the reasons explained herein, the Company cannot agree to withdraw any data requests based on the objections asserted.

Before turning to the specifics of your objections, I would like to remind you of your position on the scope of discovery in this case. Specifically, in a letter dated February 7, 2007, you asserted:

"In general, the test to be applied in this case is whether or not Pine Water Company can and will provide satisfactory and adequate water service to the complainants at reasonable rates. *Cf James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426, 671 P.2d 404 (1983)*. Because Pine Water Company has refused service, the Arizona Corporation Commission can make a determination as to whether or not it is in the public interest to amend the Certificate of Convenience and Necessity held by Pine Water Company. To make that determination, the Corporation Commission **must review all available evidence related to the issues of service, rates and public interest**. In fact, the Corporation Commission has a State Constitutional mandate to consider the interests of all who are involved in determining what are reasonable rates, and further in determining the extent of the service area of each Public Service Corporation.

Therefore, we assert **the position that the scope of discovery in this matter, is extremely broad and inclusive, covering all issues concerning service, rates and the public interest itself. All of these issues are grist for the mill of the Corporation Commission decision making process.**" (Emphasis added).

We respectfully suggest that your position in response to the Company's 4th, 5th and 6th sets of data requests is directly contrary to your previous assertions that the scope of discovery should be "**extremely broad**" and that the ACC should consider "all evidence".

With respect to your objection based on the ARCP and the discovery limits set forth therein, we respond as follows:

1. We do not believe your strict reading of the rules is correct in this case. For example, the ARCP provide time frames for discovery and motion practice that are not applicable in this case by virtue of the Procedural Order that was issued to govern this case. Moreover, in practice, I have never seen the limits on discovery under the ARCP applied to ACC dockets. Indeed, I can cite several instances where a single set of data request exceeded the limits set forth in the ARCP.
2. While we have not done the specific legal research, given that there are three separate complaints, each with unique facts regarding development plans, water supplies and the like, we believe a good argument can be made that even if the ARCP discovery limits do apply, Pine Water's limits are tripled. At a minimum, the fact of three complaints would constitute "good cause" as discussed below.
3. The limits on discovery set for in the ARCP are "presumptive" limits that may be exceeded for "good cause". In addition to their being three separate complaints, good cause also exists due to the fact that Complainants' testimony fails to provide adequate information about Complainants' claims, requiring the Respondent to engage in broader discovery than might otherwise have occurred. Good cause also exists due to the nature of the claims brought, which claims threaten the continued viability of the Company's rights under its CC&N and with respect to the relief sought, which relief exposes the Company and its existing ratepayers to harm.

All of which leads to a reasonable conclusion that your claim that discovery is limited fails. Accordingly, we ask that you promptly agree to withdraw your objection to the 6th set of data requests based on your claim that the discovery limits are the ARCP are applicable.

Regarding your other objections, we respond as follows:

A. Objection to 6.1--Complainants repeatedly claim that Pine Water has violated its obligations by failing to develop sufficient water supplies and that it cannot provide service at reasonable rates. In this light, the request seeks relevant evidence and we will require an answer.

B. Objections to 6.3, 6.12, 6.19-6.21--Complainants point to the Milk Ranch Well as evidence of the Company's failure to meet its obligations and provide service at reasonable rates. Pine Water is entitled to explore through discovery the validity of Complainants' claims that they have found an adequate source of water where Pine Water could not and each of these data requests was promulgated for that reason. I would also note that at today's ACC Staff meeting, the Commissioners expressed a desire to hear about the claims of finding viable water sources made by the Complainants. Thus, we will also require an answer to these data requests.

C. Objections to 6.6-6.10, 6.14-6.15. Mr. Moriarity's testimony references the arrangement between ATM and SH3 LLC, including the Water Purchase Agreement, which was provided to Pine Water in an earlier data request response. Indeed, Mr. Moriarity has testified that this is the manner in which he will obtain water service for his development. Thus, Complainants' have made this an issue. Moreover, as with the questions regarding the Milk Ranch Well, Pine Water is entitled to use discovery to explore the claimed water supply alternative. This is also true because, as you have repeatedly claimed, the ACC must decide what is in the "public interest" in this case. Pine Water believes that the agreement between ATM and SH3 LLC may be illegal, and that SH3 and ATM may be acting illegally. Thus, we will require answers to these data requests.

In summary, the Company's 6th set of data requests are appropriate and seek information that is relevant. We hope Complainants will remove this latest hurdle to discovery placed in front of Pine Water.

We await your prompt reply.

Jay

From: JOHN G. GLIEGE [mailto:jgliedge@earthlink.net]
Sent: Tuesday, March 27, 2007 11:06 AM
To: SHAPIRO, JAY; sdurocher@gliedge.com; rreaves@gliedge.com; Ray Pugel; edwardm
Subject: Sixth Set of Data Requests

Mr. Shapiro, this email is being sent to you as an effort to negotiate and resolve a discovery dispute issue which has arisen.

In total, to date, including the 6th set of data requests you have propounded 94 Interrogatories, 46 Requests to Produce and at least 13 Requests to Admit.

Pursuant to §14-3-101A *Arizona Administrative Code*, these proceedings are governed by the Arizona Rules of Civil Procedure. Pursuant to Rule 33.1 A you are limited to 40 interrogatories; to Rule 34 B requests for ten distinct items or categories of items; and pursuant to Rule 36(b) twenty five requests to admit. With the exception of the requests to admit you have exceeded the allowable number of questions by a substantial number. Please advise which questions you would like us to answer within this limit. If I do not hear a response from you I will stop answering questions at the point where the requisite number is reached and move the hearing officer for a Protective Order to preclude us from having to answer the same.

Sincerely, John G. Gliedge

John G. Gliedge
Gliedge Law Offices
P.O. Box 1388
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3/30/2007