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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, Respondent.	DOCKET NO: W-03512A-06-0407 Arizona Corporation Commission DOCKETED APR -9 2007 DOCKETED BY nr
ASSET TRUST MANAGEMENT, CORP., Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-06-0613
JAMES HILL and SIOUX HILL, husband and wife as trustees of THE HILL FAMILY TRUST, Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-07-0100 (Consolidated) **REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY; RESPONSE TO MOTION FOR PROTECTIVE ORDER; REPLY IN SUPPORT OF REQUEST FOR PROCEDURAL CONFERENCE**

INTRODUCTION

Pine Water Company ("PWCo") hereby files this combined reply and response in advance of the Procedural Conference scheduled for April 12, 2007 to (1) identify the discovery issues that remain in dispute; (2) specifically delineate the relief requested; and (3) respond to the responsive filing and allegations made by the Pugels, the Randalls and ATM (collectively "Complainants"). From the outset, PWCo and undersigned counsel reiterate their mindfulness of Judge Nodes' admonition to cooperate, as well as their regret at having to bring these matters to the ACC for adjudication. Unfortunately, PWCo's good faith efforts have resolved only some of the specific discovery issues in dispute. Meanwhile, it is now clear that the parties have a fundamental disagreement over the scope of allowable discovery and the issues before the ACC. Given the importance of this case to the Company and its ratepayers, PWCo submits that these issues need to be resolved to ensure the Company's ability to defend against Complainants' sweeping and unfounded allegations.[1]

DISCUSSION

The April 2, 2007 responsive filing by Complainants ("Complainants' Response") raises certain, broader issues that must be addressed before PWCo can turn to the specific discovery issues that remain in dispute.

A. Complainants Must Not Be Allowed To Narrow The Scope Of Discovery.

Complainants attempt to narrow the scope of this proceeding and discovery by arguing that the nature of government sanctioned monopolies in Arizona and ACC proceedings somehow limit the scope of permissible discovery and change the clear text,

[1] PWCo addresses the additional discovery disputes that have arisen since PWCo's prior filings and which it believes should also be addressed at the scheduled Procedural Conference. While Complainants are already aware of these issues, PWCo represents that it has ensured that copies of this filing were provided to all Complainants this day.

as well as the spirit and intent, of Rule 26(b). Complainants' Response at 6-11. No authority supporting the position that ACC proceedings are more limited is offered; and none appears to exist.

In Arizona, the scope of discovery is broad. The Arizona Rules of Civil Procedure permit discovery directed at "any matter, not privileged which is relevant to the subject matter involved in the pending action" and information that "appears reasonably calculated to lead to the discovery of admissible evidence." Ariz. R. Civ. P. 26(b). Courts broadly construe the scope of discovery to facilitate settlement, make trials more efficient and ensure resolutions on the merits rather than confusion or surprise. *See Kott v. City of Phoenix*, 158 Ariz. 415, 418, 763 P.2d 235, 238 (1988). If anything, discovery in proceedings before the ACC should be even more permissive than before Arizona's Courts. *See* R14-3-101(B) ("[t]hese rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission.").[2]

This broad approach to discovery was certainly apparent when Complainants engaged in their own discovery efforts. *See* Examples of Discovery Requests by Complainants to PWCo, attached hereto as **Exhibit A**. When PWCo asserted objections to the scope of discovery, counsel for Complainants wrote to counsel for PWCo asserting 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.*" Letter from J. Gliege to J. Shapiro, dated February 7, 2007, copy attached hereto as **Exhibit B**. That Complainants now take the exact opposite position taken when they were conducting discovery does little to promote a swift and efficient resolution to this matter.

The danger in the narrow approach now being suggested is readily apparent in this

[2] It is also noted that Rule 26.1 disclosure statements are not typically exchanged in ACC proceedings.

docket. Complainants repeatedly assert that the ACC must decide whether it is in the public interest to delete the Complainants' properties from PWCo's CC&N. *E.g., Complainants'* Response at 10. Complainants also have asserted that the fact that they have found water demonstrates PWCo's failure to meet its obligations. *See e.g.*, Complainants' Response at Complainants' Response to Data Request 4.10 (Pugel and Randall drilled deep well and found substantial water when PWCo could not). Yet, at the same time, it is asserted that the manner in which this water was found and will be used if deletion occurs has "little bearing" on the question of what lies in the public interest. E.g., Complainants' Response at 10.

For obvious reasons, Complainants should not have the final say on the key issues at stake - which is why the scope of discovery is necessarily broad. Without broad discovery, a complainant could unfairly confine the issues and prevent a respondent from developing contrary legal and factual defenses. In this case, in order to determine whether the requested deletions are in the public interest, the ACC must consider not only what PWCo is alleged to have done and not done, but also the impact on the "public", i.e., PWCo's 2000 ratepayers, if the relief requested is granted. Complainants' attempt to narrow discovery is intended to prevent the ACC from this critical analysis. The public interest question necessarily includes an analysis of Complainants' claims of finding new water sources and of how water utility service will be provided if the areas are deleted from PWCo's CC&N.[3]

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[3] Complainants' response, like many of its claims in this case, illustrates a fundamental misunderstanding of Arizona utility law and practice for public service corporations. An adequate water supply for service in the CC&N territory either exists or it does not. If Complainants have an adequate water source, then PWCo believes the usual process calls for such water source to be conveyed to the utility as part of the main extension process and as a condition of PWCo extending service to an area where it currently has no customers or utility infrastructure.

B. PWCo's Discovery Efforts Are Not A "Litigation Tactic.

Complainants seek to portray PWCo's attempts to obtain adequate responses to data requests as something more than an aggressive defense of sweeping claims and requests for relief that would have far-reaching impact on the Company and its ratepayers. Complainants accuse PWCo and its counsel of trying to "create chaos", of taking a "heaven and hell" approach, and of, utilizing "slash and burn" and "take no prisoners" techniques. *See, generally*, Complainants' Response. PWCo and its counsel take these allegations very seriously, and if they were true, expect that the ACC would as well. But these allegations are false, and intended to prejudice the ACC against PWCo and its counsel.

The discovery disputes that gave rise to the Motion to Compel cannot be viewed in a vacuum. Since the inception of discovery in this matter, Complainants have consistently and inappropriately objected to, or evaded, PWCo's data requests. *See, e.g.*, Chart of Objections, attached hereto as **Exhibit C**;[4] Complainants' Response at attached Responses to PWCo's Fourth and Fifth Set of Data Requests. Prior to the filing of the Motion to Compel, Complainants evaded providing answers to nearly one-half of PWCo's data requests. Immediately after the motion was filed, Complainants' asserted objections to most of PWCo's Sixth Set of Data Requests and then cut-off any further discovery by PWCo asserting that the number of allowable data requests was limited. All the while, the clock was ticking for PWCo.

At the January 12, 2007 Procedural Conference, the parties agreed to a fairly aggressive schedule for bringing this case to trial. After receiving Complainants'

[4] In its Second Set of Data Requests, PWCo submitted 19 data requests and Complainants inappropriately objected, refused to answer or failed to provide an adequate answer to 7. In its Third Set of Data requests, PWCo submitted 15 data requests, Complainants inappropriately objected, refused to answer or failed to provide an adequate answer to 10. In its Fourth and Fifth Sets of Data requests, PWCo submitted 52 data requests (many were subparts) and, prior to the PWCo's Motion to Compel, Complainants inappropriately objected, refused to answer or failed to provide an adequate answer to 25 of them.

testimony on March 16, 2007, PWCo had a mere 28 days to analyze Complainants' testimony, propound discovery, receive discovery responses and develop PWCo's own testimony. The importance of discovery is heightened by Complainants' skimpy direct testimony. On its own, Complainants' direct testimony provides little information and is principally conclusory and unsubstantiated. As a result, PWCo felt compelled to propound discovery to address the lack of information provided in the Complainants' direct testimony.

Receiving evasive and/or ambiguous answers, and in many cases, flat objections, to a substantial portion of its discovery has frustrated attempts to ensure that this matter is resolved on the merits within this tight deadline. Complainants recalcitrance forced PWCo to take action, but certainly not before attempting resolve. *See, e.g.*, Letter from J. Shapiro to J. Gliege, dated March 22, 2007, attached to Motion to Compel as Exhibit A; Email from J. Shapiro to J. Gliege dated March 27, 2007, Attachment B to PWCo's Request for Procedural Conference. Complainants argue that PWCo's threat to file a motion to compel after only 24-hours notice illustrates its "heaven or hell" approach to this litigation.[5] PWCo can hardly be faulted for believing the motion was necessary.

Every prior attempt by PWCo to resolve Complainants' discovery objections was met with either unequivocal refusal or calculated silence. A day of email correspondence to resolve the objections that ultimately gave rise to the motion was summarily concluded by counsel's March 22, 2007 affirmation of Complainants' discovery objections--"I stand by the objections as made." *See* Email from J. Gliege to J. Shapiro dated March 22, 2007, copy attached hereto as **Exhibit E**. Nonetheless, PWCo sought to resolve the objections a final time without judicial intervention, placing a 24-hour deadline on Complainants'

[5] Again, Complainants seemingly seek one standard applicable to PWCo and another to themselves. *See* Email from J. Gliege to J. Shapiro dated February 13, 2007, copy attached hereto **as Exhibit D** (threatening PWCo with motions to compel discovery given the tight time frames under which the parties were operating).

response due to the rapidly approaching deadline for PWCo's testimony. *See* Motion to Compel, Exhibit A. There can be no legitimate dispute that PWCo needed an immediate confirmation of Complainants' objections because of the likely time required to brief and argue the motion. Still, PWCo waited until March 26, four days after its letter, to file the motion.[6]

After Complainants refused to respond to PWCo's final attempt at resolution, PWCo "regrettably" filed its Motion to Compel. That PWCo would file a Motion to Compel and seek the ACC intervention despite the rapidly approaching due date for PWCo's testimony speaks to PWCo's deep frustration over the stymied discovery in this matter. As explained in detail below, while some issues have been resolved, new discovery issues have arisen since the filing of the motion serving to compound that frustration.

C. Procedural Schedule and Hearing Dates.

The only apparent motive offered for PWCo's alleged "heaven or hell" litigation strategy appears to be Complainants' belief that PWCo is attempting to create "chaos" in order to delay these proceedings. Complainants do not state any reason that PWCo would delay these proceedings, and no reason exists. Rather, PWCo simply desires to adequately prepare for Complainants' far-reaching allegations and requests for relief.

In light of Complainants' unsupported allegations, and despite these discovery disputes, PWCo now intends to file its direct testimony as required on April 13, 2007, although it will not be able to fully respond to all of Complainants' allegations. Thereafter, if Complainants are directed to respond to PWCo's discovery requests as requested herein, PWCo can supplement its testimony and hopes modification of the

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[6] Notably, Complainants never sought more time to consider their position. Again, counsel for Complainants emphatically stated that his objections were valid and no response was made to PWCo's March 22, 2007 letter. *See* **Exhibit E**.

procedural schedule will not be necessary. However, one other timing issue remains to be addressed.

At the January 12, 2007 Procedural Conference, the parties agreed to a 7-day response time for discovery requests after March 16, 2007. However, this time frame was not picked up in the January 16, 2007 Procedural Order, and when asked to honor this prior agreement, Complainants refused. Ultimately, Complainants and PWCo agreed to compromise on a 10-day response time for PWCo's Fourth and Fifth Sets of Data Requests; however, counsel for Complainants declined to agree to any deadlines for responses to future data requests. *See* Email to J. Shapiro from J. Gliege dated March 20, 2007, copy attached hereto as **Exhibit F**.

D. Discovery Issues Remaining in Dispute.

Nowhere in their responsive pleading do Complainants cite any case law concerning the legitimacy of their specific objections. Instead, Complainants attempt to artificially constrain the scope of discovery and portray PWCo and its counsel as up to no good. As discussed above, these attempts fail. PWCo's discovery requests fall within the scope of discovery as defined in Rule 26(b). PWCo's discovery requests directly target issues arising out of allegations in the complaint, testimony submitted by Complainants and earlier, cursory responses to PWCo's data requests. *See, e.g.,* Motion to Compel at Exhibit A. In reality, PWCo legitimately seeks information to facilitate a possible settlement, ensure an efficient resolution of this matter and/or ultimately avoid confusion and surprise in any upcoming hearings. Complainants do not contend otherwise, nor cite any law contrary to PWCo's position.[7]

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[7] When Complainants finally begin to explain, they state: "[a] review of the questions listed above, all of which are attached hereto with the Responses which have been given, shows very quickly that they (sic)." Complainants Response at 13. The sentence cuts off mid-thought and provides no explanation for the supposed flaw in PWCo's discovery requests.

1. Status of Motion to Compel.

Subsequent to the filing of the Motion to Compel, Complainants submitted responses to 5 of the data requests at issue, notwithstanding the prior objections. PWCo first acknowledges that the post-motion responses to data requests 5.4 and 5.5 do respond to PWCo's original discovery requests; therefore, those data requests are no longer at issue. Additionally, in order to narrow the issues in dispute, PWCo no longer seeks to compel responses to data requests 5.10 (e) and 5.12 (f).

Several days after the filing of the motion, counsel for Complainants wrote to PWCo attempting to rescind their "conclusion of law" objections to data requests 4.1(a), 4.1(b) and 4.5, but only to the extent that PWCo seeks Complainants' "opinion" of the supposed conclusions of law. After explaining that it does not seek anyone's "opinion", PWCo made yet another gesture to resolve the issues in dispute and submitted reworded data requests 4.1(a), 4.1(b) and 4.5. Complainants' responses to the revised data requests were received on the date of this filing and are attached hereto as **Exhibit G**. PWCo submits that these answers illustrate the difficulty PWCo has had conducting discovery regarding allegations explicitly made by Complainants due to the evasive nature of Complainants' discovery responses. Nevertheless, as these responses now clearly reflect that Complainants lack any basis for the subject allegations, PWCo will no longer seek to compel responses to data requests 4.1(a), 4.1(b) and 4.5.

This leaves only three data requests, 4.6, 4.9, and 4.11, at issue from the Motion to Compel. PWCo maintains its request that Complainants be compelled to provide adequate answers to each of these legitimate data requests:

- In data request 4.6, PWCo asked "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?" This data request was submitted because Complainants have alleged that their properties should be deleted because PWCo has failed to construct facilities that would allow it to serve their properties. Thus, the request

is relevant and no legitimate basis for Complainants' failure to answer has been presented.

- In data request 4.9, PWCo requested that Complainants specifically identify the portions of an unidentified ACC order that Complainants contended, in an earlier data request response, required PWCo to take action that has not been taken. Complainants originally objected, claiming that the unidentified order "speaks for itself." Now, after the filing of the motion to Compel, Complainants respond, identifying the order but still failing to identify the portions of the order they rely upon for their contentions. *See* Complainants' Response to Fourth Set of Data Requests attached hereto as **Exhibit G**. Complainants should be compelled to identify the portions of Decision No. 67823 they contend PWCo has violated, or if they cannot do so, to state that they cannot identify any portion of Decision No. 67823 that PWCo has violated.

- In data request 4.11, PWCo requested that Complainants "Please identify all applicable rules and regulations or industry standards concerning the amount of storage the Company should have in its water system." This data request followed several earlier data request responses wherein Complainants contended that PWCo has inadequate storage and that such inadequacy has resulted in a lack of water supply for customers and unjust and unreasonable rates. Complainants originally objected on the basis that DR 4.11 sought a conclusion of law. Then, after the motion was filed, Complainants responded that "an appropriate engineer" should determine this issue, failing to identify any rules or regulations, or indicate whether any exist. *See* Complainants' Response to Fourth Set of Data Requests attached hereto as **Exhibit G**. Complainants should be compelled to identify any laws, regulations or industry standards that support their contentions, or to state that they are not aware of any such requirements.

2. Other PWCo Data Requests at Issue.

a. PWCo's Third Set of Data Requests.

After receiving Complainants' responses to PWCo's third set of data requests, PWCo wrote to Complainants seeking adequate answers to several of the requests. *See* Letter to J. Gliege from J. Shapiro dated March 17, 2007, copy attached hereto as **Exhibit H**. Specifically, PWCo sought supplementation in two respects:

- For those documents that Complainants responded "See ADWR file", PWCo asked for copies of such documents. *See* **Exhibit C**, Chart of Objections at PWCo data requests 3.1.a, 3.1.b and 3.12. Among other reasons, it turns out that the documents Complainants claim can be

obtained from ADWR are not on file at the agency.

- For those data requests to which Complainants' responded that documents were already provided, PWCo asked Complainants to specifically identify which documents that had already been provided were responsive. *See* **Exhibit C**, Chart of Objections at PWCo data requests 3.1.a, 3.2.a, 3.2.b, 3.3, 3.4, 3.7, 3.8, 3.11, and 3.12. Because none of the documents provided by Complainants have been labeled or otherwise identified, PWCo has no other way of confirming which documents Complainants believe are responsive.

As of the date of this filing, Complainants have not responded or otherwise addressed PWCo's request for adequate answers to PWCo data requests 3.1.a, 3.1.b, 3.2.a, 3.2.b, 3.3, 3.4, 3.7, 3.8, 3.11, and 3.12. Accordingly, PWCo asks that Complainants be compelled to provide adequate answers as set forth herein.

b. PWCo's Sixth Set of Data Requests.

In addition to the dispute over discovery limits (discussed below), Complainants asserted a number of additional objections to PWCo's Sixth Set of Data Requests. As reflected in the email to Complainants' counsel from PWCo's counsel, PWCo promptly responded to these objections in an attempt to resolve the disputed objections. *See* Request for Procedural Conference, Attachment B. No response to PWCo's efforts was provided. The outstanding disputes over Complainants' specific objections to PWCo's Sixth Set of Data requests are summarized as follows:

- PWCo data request 6.1 sought to understand the bases for Complainants' repeated allegation that PWCo has violated its CC&N by failing to develop sufficient water supplies and to provide service at reasonable rates. *See* Chart of Objections, **Exhibit C**, at data request 6.1. Complainants objection that this issue is beyond the scope of this proceeding fails for the same reasons as Complainants' attempts to narrow the scope of discovery and of the ACC's consideration of the issues. *See* Section A, *supra*. Therefore, Complainants should be compelled to respond to PWCo data request 6.1.

- PWCo data requests 6.3, 6.12, 6.19, 6.20 and 6.21 sought information regarding Complainants' claims that the success of the Milk Ranch Well evidences PWCo's failure to meet its obligations under its CC&N. *See*

Chart of Objections, **Exhibit C**, at data requests 6.3, 6.12, 6.19, 6.20 and 6.21. Beyond the "public interest" in what happens if the relief sought is granted, if Complainants are going to provide testimony regarding the Milk Ranch Well and point to the claimed success of this well as evidence of PWCo's failures, then PWCo is clearly entitled to conduct discovery regarding the subject. Complainants should be compelled to respond to PWCo data requests 6.3, 6.12, 6.19, 6.20 and 6.21.

- PWCo data requests 6.6, 6.7, 6.8, 6.9, 6.10, 6.14, and 6.15 specifically address the testimony of Mr. Moriarity on behalf of Complainant ATM, wherein Mr. Moriarity testifies regarding an agreement to purchase water between ATM and a private well owner identified as SH3 LLC. Chart of Objections, **Exhibit C**, at data requests 6.6, 6.7, 6.8, 6.9, 6.10, 6.14, and 6.15. Thus, as with the data requests regarding the Milk Ranch Well (data requests 6.3, 6.12, 6.19, 6.20 and 6.21), Complainants have made the agreement between ATM and SH3 an issue in this case. They must not be allowed to now thwart discovery on the testimony that made the agreement an issue by asserting that the issue is irrelevant and beyond the scope of these proceedings. Complainants should be compelled to respond to PWCo data requests 6.6, 6.7, 6.8, 6.9, 6.10, 6.14, and 6.15.

E. Response to Complainants' Motion for Protective Order.

Complainants seek a Protective Order because i) PWCo's requested discovery supposedly falls outside the scope of permissible discovery, and ii) PWCo has exceeded the presumptive discovery limits. As discussed above, Arizona courts liberally construe an already broadly worded rule regarding the scope of discovery. *See* Ariz. R. Civ. P. 26(b). Further, the ACC liberally applies the Arizona Rules of Civil Procedure in ACC proceedings. *See* R14-3-101(B). Accordingly, the argument regarding the scope of discovery is unavailing. Complainants' remaining contention, that PWCo has exceeded the presumptive limits for discovery, also fails.[8]

The claims regarding presumptive discovery limits do not warrant the imposition

[8] PWCo notes that it also attempted to avoid a dispute over the number of data requests by promptly responding to Complainants' assertion and explaining its reasons for believing that the limits were not applicable. *See* Request for Procedural Conference, Attachment B. Complainants did not respond or otherwise seek to resolve the issue through cooperation.

of a Protective Order. For one thing, PWCo and its counsel are unaware of any instance before the ACC where the presumptive limits on the number of discovery requests was enforced. In fact, PWCo submits that discovery practice in ACC proceedings frequently involves numbers of data requests in excess of the presumptive limits set forth in the Arizona Rules of Civil Procedure. This is consistent with the ACC's desire to ensure that all parties have adequate opportunity to present evidence before the ACC renders its decision.[9]

Even if the presumptive limits on discovery rules do apply absent an express order to the contrary, the specific rules Complainants rely upon contemplate presumptive limits for discovery devices directed ***at each party***. *See* Ariz. R. Civ. P. 33.1(a) ("a party shall not serve upon any other party more than forty (40) interrogatories..."); Ariz. R. Civ. P. 34 *et. seq.* ("[a]ny party may serve on any other party requests to produce ... [and] [t]he requests shall not, without leave of court, cumulatively include more than ten (10) distinct items...."); Ariz. R. Civ. P. 36 *et. seq.* ("[a] party may serve upon any other party a written request for admission ... [and] [e]ach party ... shall be entitled to submit no more than twenty-five (25) requests...."). There are now three separate complaints in this consolidated proceeding involving four separate landowners and several different properties. "Complainants" include three separate complainants with plans for three different developments within the property subject to deletion. Any doubt on this matter should be resolved in favor of expanding or eliminating presumptive limits. *See* R14-3-101(B) ("[t]hese rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission.").

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[9] Again, in civil litigation in Arizona courts, parties are required to file disclosure statements under Arizona Rule of Civil Procedure 26.1, which often obviates the need for discovery beyond the presumptive limits. Complainants do not seem concerned about the ACC not following Rule 26.1 in this proceeding. In any event, that Rule 26.1 disclosure statements are not filed in ACC proceedings is another reason to allow broad discovery beyond the presumptive limits.

Further, "good cause" warrants expansion of the presumptive limits. *See* Ariz. R. Civ. P. 33.1(a), 34(b) & 36(b) (permitting a party to exceed the presumptive limits of these discovery devices with good cause). The two separate Complaints filed by Complainants each assert sweeping claims predicated on distinct factual issues. Yet, the direct testimony submitted by the Complainants was 7 pages combined (including 2.5 pages of testimony from Mr. Ploughe on Complainants' claimed water sources). Complainants' failure to support their allegations in their direct filing necessitated broad discovery by PWCo in order to either confirm that Complainants lack support for their sweeping allegations, or to avoid trial by ambush.

Complainants' efforts at evading PWCo's discovery requests, as discussed above, further supports good cause exclusion of the presumptive limits on the number of discovery requests. For instance, data request 4.2 sought clarification regarding the response to data request 2.7, data request 4.8 sought clarification of the response to data requests 2.14, 4.9 and 4.10 followed up on Complainants' ambiguous response to Complainants' 2.15 and data request addressed the response to data request 2.17. Indeed, a number of PWCo's subsequent data requests, including almost all of PWCo's Sixth Set of Data Requests, concerned topics addressed by PWCo's earlier discovery, topics that remained unanswered as a result of inadequate or evasive responses.

For all these reasons, PWCo respectfully requests that Complainants' Motion for Protective Order be denied.

CONCLUSION AND RELIEF REQUESTED

PWCo sought to avoid the expense and delay of bringing these discovery disputes with Complainants to the ACC for resolution. As explained hereinabove, those efforts have been largely unsuccessful and several issues remain in dispute. As a consequence, in addition to clarification regarding the scope of discovery and the issues in this proceeding, PWCo respectfully requests an order specifically directing Complainants as follows:

A. That the response time for data requests served after March 16, 2007 is 7 days, as the parties agreed at the January 12, 2007 Procedural Conference.

B. That Complainants be compelled to provide adequate answers to PWCo data requests 3.1.a, 3.1.b, 3.2.a, 3.2.b, 3.3, 3.4, 3.5, 3.7, 3.8, 3.11, 3.12, 4.6, 4.9, 4.11, 6.1, 6.6, 6.7, 6.8, 6.9, 6.10, 6.14, 6.15, 6.19, 6.20 and 6.21.

RESPECTFULLY SUBMITTED this 9th of April, 2007.

FENNEMORE CRAIG, P.C.

By_____

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1901261.5/75206.010

Exhibit A

EXHIBIT A

EXAMPLES OF DISCOVERY REQUESTS BY PUGEL *ET AL.* TO PWCO

* Please state with detail and particularity all litigation in State or Federal Courts in which Pine Water Company or its predecessors has been involved. For each matter state the names of the parties, the Court before which such action was brought, the outcome or resolution of such litigation.

* Please provide copies of all complaints, answers, motions, judgments, orders, settlement agreements, depositions, responses to discovery made by Pine Water Company or its predecessors, or other documents in any litigation in which Pine Water Company has been involved in the Superior Court, in the US District Court, or before the Arizona Corporation Commission since January 1, 2003.

* Has Brooke Utilities or Pine Water Co. ever sought a willing buyer for Pine Water Company's. stock or assets for any reason?

* What expenditures had Pine Water Co. made, and to whom, for legal services related to rate hearings, or possible infringements of its Certificate of Convenience and Necessity during the last five calendar years.

* What was the cost of constructing the Project Magnolia pipeline, is it complete, when was it put into service, what are the operating costs, and how are operating and capital costs being allocated to Pine Water Co.?

* Admit that Pine Water Company, or its predecessors, have been involved in litigation with Mike Armstead.[1]

* Provide copies of all maintenance records, copies of logs and reports regarding leaks and other system failures, repair and replacement records of Pine Water Company system for the last five years, including copies of all reports filed with any agency of the state or federal government concerning the operation of the water system.

* Provide copies of all records and maps of the Pine Water Company water system showing the location of all physical facilities, including, but not limited to water lines, pumps, wells, storage facilities, pressure pumps, pressure facilities, the location and production of all wells, information regarding total water pumped, total water sold, operating budgets, audited financial statements, rate filings for the past five years, amounts paid by the Company for Certificates of Convenience and Necessity, amounts received by the Company for all or portions of Certificates of Convenience and Necessity, water rate studies, connection fee studies, impact fee studies, total sales, total accounts by customer class and total water usage by customer class for the past fifteen years and any and all customer lists of the Company.

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[1] Mr. Armstead was employed by the water provider at the time PWCo's predecessor was acquired by Company's present shareholder in the mid-1990s. Mr. Armstead was known to be part of a group, the International Brotherhood of Electric Workers, Local Union No. 387, that attempted to form a union and filed an action with the National Labor Relations Board. That action was dismissed upon withdrawal by the Petitioners in October, 1998.

Exhibit B

Gliege Law Offices, PLLC

John G. Gliege ••• Stephanie J. Gliege

February 7, 2007

Jay L. Shapiro
Fennemore Craig
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Phoenix, AZ 85012-2913

Re: Objections to Interrogatories and Requests for Production of Documents

Dear Mr. Shapiro:

I have had the opportunity to read and digest your objections to the discovery propounded by my clients and your responses to the Requests for Admission and have found that the position which is being asserted on behalf of the Company is both unpalatable and legally incorrect.

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.

Therefore, to that end ***Rule 26(b), Arizona Rules of Civil Procedure,*** allows for very expansive discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." In looking at your specific objections we note:

OBJECTIONS TO INTERROGATORIES:

1. Page 6 Company's Objections – clearly Mindi Brogdon of Brooke Utilities was speaking for its wholly owned subsidiary, Pine Water Company when these comments were made.

123 S. San Francisco Suite 9 Flagstaff, AZ 86001
Mailing: P.O. Box 1388 Flagstaff, AZ 86002
Phone: 928-226-8333; Cell: 928-380-0159; Fax: 928-226-0339
E-mail: jgliege@gliege.com; E-mail: sgliege@gliege.com

Since the Commission can take "judicial notice" of a previous proceeding where Brooke Utilities was identified as the sole owner of Pine Water Company, the attempt to avoid responding to this question on such grounds is not only obstreperous, but disingenuous on the part of the Company. We will demand that this question be answered.

2. Page 7, line 1 Company's Objections – Since a portion of this action is concerned with the "public interest" and the ability of Pine Water Company to provide service, this request is not beyond a reasonable scope. If there is so much litigation affecting the company then perhaps the public interest is not being served by this company. Therefore, we will demand that this question be fully answered.
3. Page 7 line 13 – Again you are choosing to "play with words" rather than showing any concerted good faith effort to provide appropriate responses. This information is relevant to the determination of whether or not satisfactory and adequate service can be provided. "Capital Improvements" is an accounting terms, clearly capable of definition in the ordinary conduct of the business. Therefore, we will demand that these questions be answered.
4. Page 8 line 3Company's Objection – the question is addressed to a publicity flyer sent by Pine Water Company, or its owners, to all the customers of Pine Water Company. This falls clearly into the realm or scope of the public interest which the Commission must examine as a part of this proceeding. Therefore, we will demand that these questions be answered
5. Page 8 line 18 Company's Objection – This objection is not well taken. The orders of the Commission are quite clear as to what Pine Water Company is to be doing in this area and the response should be directed to its actions regarding such orders. Engaging in literary critique is not complying with the ***Arizona Rules of Civil Procedure*** applicable in this instance, and if anything, is indicative of how Pine Water Company is not serving the public interest in Pine, Arizona, or in the properties in question. Therefore, we will demand that these questions be answered
6. Page 9 line one Company's Objections – Pine Water, or its predecessors has known the proposal of Pugel and Randall, and in fact refused to provide service to them. There were no further steps for Pugel and Randall to take, service was refused. The objection is without merit. Therefore, we will demand that these questions be answered
7. Page 9 line 11 Company's Objections – Pine Water or its predecessors has known of the plans for the ATM property for over twenty years and in fact had previously agreed to provide the service being requested before Pine Water Company refused to provide service. The forty three meters necessary to complete the project were approved in 1985. Therefore, Pine Water Company has had this information for more than 20 years. Therefore, we will demand that these questions be answered.
8. Page 9 line 21 Company's Objection – The information sought is to show the total supply of water available to and used by Pine Water Company, regardless of source. This is clearly within the realm of determining whether or not Pine Water Company is serving the public interest. Therefore, we will demand that these questions be answered.
9. Page 10 line one Company's Objection – Again, due to the relationship between the various entities, in an effort to determine if Pine Water Company can provide adequate satisfactory service at reasonable rates, and that the public interest is being served, this question is within the scope of allowable discovery, therefore, we will demand that these questions be answered.
10. Page 10 line 16 Company's Objection – This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

11. Page 11 line 3 Company's Objection – This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
12. Page 11 line 15 Company's Objections -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
13. Page 11 line 22 Company's Objections – The question relates to the public interest as it applies to this company. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
14. Page 12 line 17 Company's Objections – The question of reasonable rates for service is clearly a question in this proceeding. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
15. Page 12 line 27 – Company's Objections – First you tell us that the information is substantial and too costly to provide, and then you tell us it is available information; if it is available it should not be too costly to provide. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
16. Page 13, line 16 Company's Objections -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
17. Page 13, line 24 Company's Objections – Whether service can be provided at "reasonable rates" to the property seeking deletion is a proper issue in this case. The information sought is related to the development of the "reasonable rates" to be charged. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
18. Page 14, line 4 Company's Objections – The first portion of the question asks whether or not the reports have been filed, not too onerous a request. If they were filed, then copies should be available from the Company. Therefore, we will demand that these questions be answered.
19. Page 14 Line 10 Company's Objection -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
20. Page 14 line 18 Company's Objection – The information sought relates to whether or not the Complainants could reasonably expect to receive water service on the same basis and at the same cost as all other customers of the Pien Water Company. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Next, regarding the Requests for Production of Documents, it is noted that your general objection is that the requests are onerous. Such an unsubstantiated statement alone will not support a Motion for a Protective Order to preclude discovery. Further, according to the information in my client's possession, the property transaction with Mr. Richey took place less than five years ago, thus the information should be readily available.

The objection to the discovery request regarding negotiations or agreements with the Pine Strawberry Water Improvement District is ill founded. This question goes to the issue of the public interest and whether or not Pine Water can provide adequate satisfactory service to the Complainant's property. Therefore I would request that you reconsider your position on this matter.

The objection to providing information concerning legal proceedings effecting the Pine Water Company is also one which is indicative of issues of public interest and the ability to service.

This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Regarding reports filed with the government at all levels, the objectionable material can be redacted and the reports provided. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Your objection to Request to Produce number 9 is evasive and not directed to the question which requests information in your possession. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In order for the Commission to determine if Pine Water Company can provide adequate and satisfactory water service it will need to know the extent of the system. Question 10 seeks information about that. It is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered. We will assert the same position as to Question 19.

Regarding Request to Produce number 23, the response of the company clearly indicates that the Commission should look into whether or not the public interest is being served by oral hauling contracts with undisclosed trucking companies. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In order to determine if the public interest is being served within the Certificated Area affecting my client's property it is necessary to know about the financial viability of the entities serving the commodity or supplying it to the serving entity. The information is relevant to the question of satisfactory and adequate service and the public interest. Therefore, we will demand that this request to produce be answered.

Last, regarding the Requests to Admit:

Request number 1: The objection is not well taken or grounded because the issue of adequate and satisfactory service and the public interest are presented in this proceeding and thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Request number 5: This objection is not well taken because Pine Water Company had initially refused to provide water service to the Complainant's property. This Request goes to the issues of adequate and satisfactory service at a reasonable cost, in an equitable manner as all other customers are served, and as to whether or not the public interest is being served. |Thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Regarding Request to Admit number 6, Decision 67823 certainly requires Pine Water Company to take affirmative steps regarding the development of additional water resources. Further, that issue is relevant to the issues of adequacy of supply and the public interest, thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In response to the Company's Objection to Request Number 15, the Complainants assert that this is a question which affects the public interest in the provision of water service, thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Therefore, I respectfully request that you reevaluate your position and work cooperatively to achieve the appropriate discovery in this matter. Should you be unwilling to attempt to reach any reasonable compromise on these issues I would suggest a Procedural Conference with the hearing officer since there are more issues in dispute than can reasonably be handled in a telephone call. I will be available by telephone and email, but not in person for the next 13 days, so I would like to have such a conference scheduled for after February 22, 2007. Please contact me concerning available dates and times after that date.

Sincerely,
GLIEGE LAW OFFICES PLLC

_____
John G. Gliege

Exhibit C

Data Request	Complainants' Response or Objection
3.1.a. [Regarding Milk Ranch Well] Identify the drilling method, formations encountered (lithologic log), summary of drilling activities including the identification of loss circulation zone(s), fractures encountered, water increases or losses during drilling, drillers report, and driller's daily log of drilling activity.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided. The well was drilled via dual air rotary advance casing technology. See ADWR file for lithologic log.
3.1.b. Provide an as-built drawing of the Milk Ranch Well #55-210454, including borehole and casing diameters, perforation interval and slot sizes, annular material, and total depth.	See ADWR File
3.2.a. With respect to the step test and constant rate test performed on the Milk Ranch Well, please identify the capacity of the testing pumping equipment, the pump settings and the pump curves.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....
3.2.b. State whether the pumping rate was held constant during the tests? If not, were there fluctuations in the rate over time, and at what intervals (i.e., (daily)?	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....
3.3 Much of the data on the Milk Ranch Well was prepared by and/or for Highland Water Resources Consultants, Inc. Is it Highland's opinion that the pumping of sand can be overcome with more development, the use of sand separators, reduced pumping rates, or a combination of these efforts? Please explain the bases for your response.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....
3.4. What is the identified aquifer(s) for the Milk Ranch Well, well #55-210454, and what is the thickness of the aquifer?	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....
3.5 Admit that Complainant Ray Pugel has stated that he does not want to and/or will not do business with Company.	Object to the question as irrelevant and argumentative and that any response will not lead to the discovery of admissible evidence....
3.7 Please provide copies of any correspondence between any of the Complainants and the Company.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....

Data Request	Complainants' Response or Objection
3.8 Please provide copies of all documents supporting Complainants' assertion that Complainant Ray Pugel requested and was denied service by Company including any correspondence between Pugel and the Company.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided....
3.11 Has a water balance been developed for either system discussed in data request 3.10? If so, please provide supporting documentation.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided. Again, this question relates to work that has not been commissioned of HWRC as yet.
3.12 Please provide hydrograph data that supports the sensitivity of the aquifer systems associated with the Milk Ranch Well to precipitation.	In response to a previous data request all documents pertaining to the Milk Ranch Well were provided to Pine Water Company. To do so again would be redundant. Please rely upon what was heretofore provided. Please see the SHDWID report on file with ADWR. Also, this again relates to work that has not been commissioned of HWRC as yet.
4.1.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.	Objection: Calls for a conclusion of law.
4.1.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.	Objection: Calls for a conclusion of law.
4.5 Complainants repeatedly refer to Company's inability to deliver water at "reasonable rates". What constitutes "reasonable rates"?	Objection: Calls for a conclusion of law.
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?	Objection: Calls for a conclusion of law.
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.	...The documentation on the Milk Ranch LLC Well has previously been provided to the Company.

Data Request	Complainants' Response or Objection
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.	The Order referenced in Decision No. 67823 in Docket W-03512A-03-0279. Object to the Question, the Order speaks for itself.
4.11 Please identify all applicable rules and regulations or industry standards concerning the amount storage the Company should have in its water system.	Object to the question to the extent it requires conclusions of law....
5.4 How does development of an RV Park benefit the public interest?	Object to the question: calls for a conclusion of law....
5.5 How does development of a multi-unit residential dwelling development (i.e., a Town Home or Condominium) benefit the public interest?	Object to the question: calls for a conclusion of law....
5.10.c Admit that the Company has offered to negotiate an extension agreement with Mr. Pugel pursuant to AAC R14-2-406.	Deny. The Will Serve letter does not comply with the requirements of A.A.C. R14020406.
5.10.e Admit that advances in aid of construction are refundable.	Object to the question: calls for a conclusion of law. Pursuant to A.A.C. R14-2-406 there are limitations on the refunding of advances in aid of construction.
5.12.b. Identify all water sources owned by this entity, including Maps and ADWR Well Registration Nos.	Object to the question, this information not in possession of the complainant, nor readilty available to the complainant and is beyond the scope of reasonable discovery.
5.12.c. How much water has each well owned by SH3 LLC produced in each of the past three years.	Object to the question, this information not in possession of the complainant, nor readilty available to the complainant and is beyond the scope of reasonable discovery.
5.12.d. How many customers does SH3 LLC provide water to?	Object to the question, this information not in possession of the complainant, nor readilty available to the complainant and is beyond the scope of reasonable discovery.
5.12.e. How much water was used by SH3 LLC's customers as identified in response to the prior data request?	Object to the question, this information not in possession of the complainant, nor readilty available to the complainant and is beyond the scope of reasonable discovery.
5.12.f. Provide copies of all contracts and other documents related to an agreement to purchase water between SH3 LLC and ATM.	Objection to the question, this document was already provided.

Data Request	Complainants' Response or Objection
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.	Object to the question calls for a conclusion of law.
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.	Object to the question, this information not in possession of the complainant, nor readilty available to the complainant and is beyond the scope of reasonable discovery….
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.
6.3. 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.
6.6. 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.a. Concerning the Water Purchase Agreement between ATM and SH3 LLC, please state, explain or identify: 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.

Data Request	Complainants' Response or Objection
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.
6.9.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.

Data Request	Complainants' Response or Objection
6.9.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.
6.9.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.
6.12.a. Regarding the Milk Ranch Well, please provide the identification of the well driller(s) providing services at the Milk Ranch well.	OBJECTION: THIS INFORMATION HAS BEEN PREVIOUSLY PROVIDED.
6.12.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.
6.12.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.
6.12.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.
6.14. 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.
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.
6.19. 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.

Data Request	Complainants' Response or Objection
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.

1901070.2/75206.010

Exhibit D

SAN JOSE, MARIA

From: jgliege@gliege.com
Sent: Tuesday, February 13, 2007 11:59 AM
To: SHAPIRO, JAY
Cc: sdurocher@gliege.com; jgliege@gliege.com
Subject: Discovery issues

Dear Jay:

Please consider this email to be a good faith effort to resolve discovery issues pursuant to Rule 37, Arizona Rules of Civil Procedure. After reviewing all of Pine Water Company's responses to the discovery to date it appears to me that Pine is clearly not interested in being forthcoming with requested information and instead is choosing to play "discovery games." This is of concern to us because of the time constraints on preparing this matter for hearing.

For example, but not as a complete list of the objections which my client will make to the answers provided by Pine Water Company, we note as follows:

1. That the Answer to Question 1b of the interrogatories is absurd. First you say you cannot respond because we did not ask for service, but in fact, we did and we were denied service by Pine Water, thus there was no way for my clients to provide any more information to Pine Water.

2. You continually, without setting forth any grounds complain of the onerous discovery requests; well sadly that is how the system works and your client is required to respond, or be willing to face the sanctions for failure to do so.#

3. In response to question 5 Pine indicates that my clients should apply for a variance, but in response to number three you tell us that Pine has never received one. If Pine is supposed to be able to provide reasonable service at a reasonable price in the public interest, then the burden should be on Pine, not the Complainants to obtain the variance.

4. Mr. Pugel has not declined to ask for service as you have represented, he was turned down.

5. In response to interrogatory number 9 Pine provides a less than sincere essay, not a simple yes or no answer to the question.

In response to the Request to Produce:

1. Answer number 2 is not responsive at best.

2. In response to number 6, the Complainants will allege that the Company does not have the options that it sets forth.

3. In response to number 8, if there are security issues, then this may require an in camera review by the hearing officer, not an outright refusal to comply.

4. The response given to Request number 9 is not responsive.

5. One of the central aspects of this case is the public interest. To determine if Pine is operating in the public interest the information sought in Request number 19 is relevant.

When I first started practicing law the game of "hide the pea" was very popular in discovery. Then came the changes to the rules and such activity is no longer acceptable in the legal profession. "No longer will it be advantageous to play games of semantics. . . . Such practices have fosgtered delay and deception in the name and place of good lawyering . . .." Norwest Bank NA v. J. Fife Symington III, 197 Ariz. 181.

The old system of using discovery to gain tactical advantage, and treating the opposing counsel as if it is the enemy to be fought and not trusted at each step of the proceeding is no longer the way to conduct litigation in Arizona. In re: Daniel J.
Radacosky, 183 Ariz. 531. We were requested by the hearing officer to cooperate and instead your client is choosing to be as obstructive and non-cooperative as possible. One can only assume that your client is assuming this position because Pine Water fully knows that it cannot provide reasonable service at reasonable rates, in the public interest to the Complainants.

If your client is unwilling to be cooperative, then my clients have no choice but to move the hearing officer to appropriately sanction your client for his obstructive behavior.

Jay, there is nothing to be gained about feigned innocence as to the meaning of words or phrases, or in claiming that it is too much work. In litigation work has to be done to arrive at a fair result. At this point in time it appears that Pine Water Company's interest is not in proceeding, but in obstructing the proceedings.

Therefore, unless I hear from you to the contrary that your client will cooperatively respond to the discovery propounded, I will be forced to file a formal motion with the hearing officer and have him resolve this matter. While my clients may grant your clients some relief, the scope of the objections filed is so great that it appears that your client is attempting to "hide the pea" which is no longer the manner in which litigation is conducted.

I will be back in my office on February 22, 2007. I am available by email and by phone prior to that time. Please email me or call me at 928 380 0159 if you would like to discuss this further. If it is not resolved by the time I return I will be seeking appropriate relief for my clients from the hearing officer.

John G. Gliege

Exhibit E

SAN JOSE, MARIA

From: JOHN G. GLIEGE [jgliege@earthlink.net]
Sent: Thursday, March 22, 2007 3:26 PM
To: SHAPIRO, JAY; David Davis
Subject: your responses to the complainants objections.

Jay, I am reviewing the objections I sent to you this morning regarding the fourth and fifth data requests. Regarding the objections made to the fourth data request, for the most part these were because questions either called for a conclusion of law or for other reasons relating to whether or not this was within the scope of discovery. I have reviewed the objections made and do not believe that the hearing officer would order the Complainants to provide such information, therefore I will stand by the objections as made.

John G. Gliege

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

928 380 0159

Exhibit F

SAN JOSE, MARIA

From: SAN JOSE, MARIA
Sent: Monday, April 09, 2007 1:53 PM
To: SAN JOSE, MARIA
Subject: Response to your letter of March 17, 2007
Importance: High

From: JOHN G. GLIEGE [mailto:jgliege@earthlink.net]
Sent: Tuesday, March 20, 2007 8:09 AM
To: SHAPIRO, JAY
Cc: Torrey, Kevin; Hardcastle, Robert T.; David Davis; Ray Pugel; edwardm; rreaves@gliege.com; sdurocher@gliege.com
Subject: Re: Response to your letter of March 17, 2007

Well, Jay, if that in fact is what was said, then we shall comply with the ten day period, however, pursuant to the Rules of Civil Procedure, anytime there is a time limit less than ten days, as there is here, intervening weekends and holidays are not counted, nor is the day in which you send the request for discovery counted. Further, the Rules allow five days additional time for all matters served by mail, so we shall accomodate the original agreement in line with the applicable Rules of Civil Procedure. John G. Gliege

Exhibit G

SAN JOSE, MARIA

From: JOHN G. GLIEGE [jgliege@earthlink.net]
Sent: Monday, April 09, 2007 11:19 AM
To: SHAPIRO, JAY; David Davis; Torrey, Kevin
Subject: Responses to 4.1 & 4.5
Attachments: Responses to revised data request 4.1 and 4.5 07 04 09.doc

Jay, attached please find our responses to the revised data requests 4.1 and 4.5. John

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

928 380 0159

COMPLAINANTS' RESPONSE TO AMENDED DATA REQUESTS 4.1 AND 4.5

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. Explain Complainant's understanding of any and all rules, regulations, statues or other laws or orders that require Company to provide a 100 year adequacy for development within its CC&N
b. Explain Complainants' understanding of any and all rules, regulations, statues or other laws or orders that require Company to provide "adequate fire protection" for development within its CC&N.

RESPONSE: WITHOUT WAIVING ANY OBJECTION HERETOFORE MADE, THE COMPLAINANTS RESPOND AS FOLLOWS.

a. Complainants are not lawyers, nor trained in the analysis of laws rules and regulations. As to whether or not there are any rules, regulations, statutes or other laws or orders requiring the Company to provide a 100 year adequacy for development within its CC&N they would defer to experts in that field. They are aware that the Legislature of the State of Arizona is presently considering amendments to the state statutes or the imposition of new requirements pertaining to adequacy of water in areas such as Pine. From a business standpoint, having a 100 year adequacy of water and adequate flow for fire protection makes their property more valuable than property which does not have these criteria attached. Therefore it is in the best interest of all property owners to have these criteria attached to their property. Since such attributes are available to their property it would be preferential to use them, rather than be in a CC&N that does not have them.

b. Again, Complainants are not lawyers, nor trained in the analysis of laws rules and regulations. As to whether or not there are any rules, regulations, statutes or other laws or orders requiring the Company to provide a adequate fire protection for development within its CC&N they would defer to experts in that field. . From a business standpoint, having a 100 year adequacy of water and adequate flow for fire protection makes their property more valuable than property which does not have these criteria attached. Therefore it is in the best interest of all property owners to have these criteria attached to their property. Since such attributes are available to their property it would be preferential to use them, rather than be in a CC&N that does not have them.

4.5 Throughout this proceeding, Complainants repeatedly refer to Company's inability to deliver water at "reasonable rates." Please explain Complainants' understanding of what constitutes "reasonable rates?"

RESPONSE: WITHOUT WAIVING ANY OBJECTION HERETOFORE MADE, THE COMPLAINANTS RESPOND AS FOLLOWS.

Complainants are not lawyers, nor trained in the analysis of laws rules and regulations. As to whether or not there are any rules, regulations, statutes or other laws or orders requiring the Company to provide a 100 year adequacy for development within

its CC&N they would defer to experts in that field. Reasonable rates are a matter that has been defined by the Corporation Commission and the Courts. They are supposed to set reasonable rates based upon the requirements of state law.

The rates are not reasonable when no or only limited service can be provided, or when discriminatory requirements are imposed on people in order to obtain service. Rates are not reasonable when people are required to provide the water and infrastructure and not compensated for the property put to public use. Rates are not reasonable when there are curtailment rates in effect, or when the people in a community are charged the cost of hauling water when it is not necessary to do so.

Exhibit H

FENNEMORE CRAIG, P.C.

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Phoenix, Arizona 85012-2913
(602) 916-5000

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

March 17, 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 – Fourth Set of Data Requests and Request for Complete Data Request Responses to Third Set; Docket Nos. W-03512A-06-0407 and W-03512A-06-0613 (consolidated)

Dear Mr. Gliege:

Enclosed is Pine Water Company's ("Pine Water") Fourth 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. Full and fair answers to the Company's fourth set of data should eliminate any dispute over the Complainants' responses to the Company's second set of data requests.

The Company's concerns over the responses to its third set of data requests are not so easily resolved. In several instances, the Complainants' response is no more than "see ADWR file". No further information is provided. Nor did Complainants' timely object to providing the requested information because it was onerous or otherwise objectionable. While the Company did respond to certain data requests by reference to public agency records, it did so only after stating a basis for objecting and providing information to assist Complainants in locating such files. Of course, in many instance, the Company actually provided Complainants the public documents because they were in their possession, like the Company's Utility Annual Reports. We respectfully request that all of the "see ADWR file" documents in Complainants' possession be provided on or before Wednesday, March 21, 2007.

Similarly, Complainants' responses to several of the third set of data requests refer to one or more unidentified documents regarding the Milk Ranch Well allegedly provided previously to Company. There are already 1000s of pages of documents subject to discovery in this case, and there will be numerous filings and exhibits. To make matters worse, none of the documents

provided by Complainants have been labeled or numbered. Thus, it is nearly impossible for the Company to know what documents Complainants' are referring to in response to the third set of data requests. Accordingly, Company respectfully requests that these Milk Ranch Well documents be resubmitted to Company with bates labeling or numbering to specifically identify all documents being provided in response to data requests. Such submission is requested no later than Wednesday, March 21, 2007.

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.

Finally, I believe that the January 16, 2007 Procedural Order missed one aspect of the agreements reached at the January 12, 2007 Prehearing Conference. Specifically, I do not have access to the Transcript but have a strong recollection that the parties agreed to a 20-day response time for discovery responses up until March 16, 2007, when the Complainants' direct filing was due, and to a 7-day response time thereafter. However, it does not appear that this aspect of the agreement found its way into the Procedural Order. We would rather not have to return to Judge Nodes for an emergency procedural conference and ask that you confirm our earlier agreement to a shorter response time for discovery at this stage of the Proceeding. This would mean that Complainants' full and complete responses to the Company's fourth set of data requests would be due within 7 calendar days, or on or before **Monday, March 26, 2007**.

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

1. Jay Shapiro, Attorney, Fennemore Craig, 3003 N. Central Avenue, Suite 2600, Phoenix, AZ 85012.

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.)

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