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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 MAY - 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) **NOTICE OF FILING SURREBUTTAL TESTIMONY**

Pine Water Company ("PWCo") hereby submits this Notice of Filing Surrebuttal Testimony in the above-referenced matter. Specifically, filed herewith in PWCo's surrebuttal filing are the following testimonies, along with supporting schedules and/or exhibits:

1. Direct Testimony of Robert T. Hardcastle; and
2. Direct Testimony of Stephen D. Noel.

RESPECTFULLY SUBMITTED this 9th day of May, 2007.

FENNEMORE CRAIG, P.C.

By _____
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BEFORE THE ARIZONA CORPORATION COMMISSION

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SURREBUTTAL TESTIMONY
OF
ROBERT T. HARDCASTLE

I. INTRODUCTION AND PURPOSE.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. Robert T. Hardcastle, 3101 State Rd., Bakersfield, California 93308. My telephone number is (661) 633-7526.

Q. ARE YOU THE SAME ROBERT HARDCASTLE THAT FILED DIRECT TESTIMONY IN THIS MATTER?

A. Yes.

Q. HAVE YOU REVIEWED MR. PUGEL'S AND MR. MORIARITY'S REBUTTAL TESTIMONIES?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. Generally, it is to respond to the testimonies of Mr. Pugel and Mr. Moriarity on two subjects. First, I will address the continued assertions that PWCo is not providing adequate service at reasonable rates to its customers. Second, I will address the Developers' testimonies with respect to PWCo's efforts to work with them to extend service. I have also reviewed Mr. Ploughe's rejoinder testimony, however, the Company's expert witness, Stephen Noel will address that testimony in his surrebuttal testimony. I would also note that the Hills did not file any rebuttal testimony. This means that when I refer to "Complainants" or "Developers" in this surrebuttal I am generally referring to the Pugels and ATM, along with the Randalls, who have not filed testimony but seem to be linked to the Pugels.

Q. WHY DO YOU REFER TO THE COMPLAINANTS AS "DEVELOPERS" HERE AND IN YOUR DIRECT TESTIMONY?

A. Because regardless of what they want everyone to believe, that is what they are. For example, "Developer" is defined as "a person or entity that offers real property

in a development for sale." Ariz. Rev. Stat. § 32-2101(21). This is not about individuals seeking an extension of service for their personal residences. This is about development for the Complainants' commercial gain. The Complainants are developers.

Q. IS THERE ANYTHING WRONG WITH THESE PROPERTY OWNERS WANTING TO DEVELOP THEIR PROPERTIES?

A. No. What is wrong is that they want special treatment and refuse to follow the process that the Commission lays out for us in its rules and regulations. That process allows public service corporations to place the cost of new development on the Developers rather than on our existing customers. Further, in the case of Pine, Arizona, the Commission's orders are intended to ensure that new demand does not negatively impact existing customers. Again, the burden of development is to be placed on those developing. Whatever occurred before June 2006, when the first complaint was filed, PWCo has since then tried to work with the Developers to extend service in a manner that does not negatively impact the Company or its existing customers. What is wrong is that the Developers just won't even try to cooperate. I will discuss this further in Section III of my surrebuttal testimony.

II. <u>ADEQUACY OF SERVICE.</u>

Q. MR. PUGEL IS ASKED (AT PAGE 3 OF HIS REBUTTAL) WHETHER HE BELIEVES THAT PWCO IS PROVIDING ADEQUATE WATER SERVICE TO PROPERTY OWNERS IN PINE? WHAT EVIDENCE DOES MR. PUGEL OFFER IN HIS REBUTTAL TESTIMONY TO SUPPORT THIS POSITION?

A. None. Actually the only answer he gives to the question is "no". Pugel RB at 3.

Q. DO YOU BELIEVE THAT THE COMPANY IS PROVIDING ADEQUATE SERVICE AT REASONABLE RATES?

A. Yes, but first we need to distinguish the difference between providing adequate water service to our existing customers and extending service to new development. The Developers' claims in this case are that PWCo has failed to establish that it can provide adequate service at reasonable rates to the Developers' properties. *See, e.g.,* Pugel RB at 6; Moriarity RB at 4; Amended Complaint at 5, Count IV, ¶ 7. This is a very different issue from whether we are providing adequate service at reasonable rates to our existing 2000+ customers as I discussed immediately above, and for the reasons I discuss in Section III of my testimony.

Turning next to Mr. Pugel's allegation that we are not providing adequate service to our existing customers in Pine, Arizona, it appears from his rebuttal testimony that his reasoning is that (1) we have not contacted him about purchasing water from his Milk Ranch Well; (2) PWCo has water sharing agreements; and (3) PWCo sometimes has to haul water during summer peak demand periods. I do not believe any of these reasons supports his allegation that PWCo is not providing adequate service to customers at just and reasonable rates.

Q. WHY NOT?

A. Starting with the "rates", our rates are set by the Commission, which concluded that the rates were just and reasonable when it set them in August, 2004. *See* Decision No. 67166 (August 10, 2004) at 13. None of the Complainants in this consolidated docket challenged the rates.

Q. IS IT JUST AND REASONABLE TO CHARGE CUSTOMERS TO HAUL WATER?

A. Yes, under the tariff approved by the Commission it is reasonable to charge customers to haul water. As the Commission held, PWCo's Water Augmentation

Surcharge is a "reasonable resolution" because it is only used as a "last resort". *See* Decision No. 67166 at 9. PWCo only hauls water when we have to—when exigent circumstances require us to do so. Such exigent circumstances have occurred on only 15 days in the last two years. These are all in the summer and almost entirely during long holiday weekends when the population in Pine swells due to part-time residents coming to their second homes from Phoenix and elsewhere. Although I am happy to say that even during these serious water management times, PWCo has not instituted Stage 5 water conservation levels since July 2003.

Q. WHAT ABOUT CLAIMS THAT YOU COULD HAVE PURCHASED MORE WATER FROM THE SOLITUDE TRAILS DOMESTIC WATER IMPROVEMENT DISTRICT TO AVOID HAULING?

A. Those claims have been made in a pending Commission complaint filed by Mark Fumusa, and they were made again by someone speaking on his behalf at last week's Commission Town Hall meeting in Pine, Arizona. Those claims are without merit.

Q. WHY IS THAT, MR. HARDCASTLE?

A. First, PWCo has no incentive to haul water. We make no money by hauling water. In fact, we lose money. Water hauling is also very difficult to administer. It requires management attention and takes operational focus away from water system management at the worst possible time of the year.

Second, in 2006, we purchased every drop of water available from the Solitude Trails Domestic Water Improvement District. We would have bought more water from them had they not shut down one of the two wells in February 2006. *See* Letter from Mr. Fumusa to Mr. Hardcastle dated February 20, 2006, copy attached hereto as RTH Surrebuttal **Exhibit 1**. That well has not yet been

returned to service. PWCo can't buy water from a well that the owner does not wish to operate.

Q. WHAT ABOUT MR. PUGEL'S CLAIM THAT THE COMPANY'S ONLY SOLUTION TO WATER SHORTAGES IS WATER HAULING?

A. Mr. Pugel states that this is the conclusion of the 500+ page Water Supply Report we filed with the Commission in November 2005. Pugel RB at 4. But he does not provide reference from that report to support his testimony, nor would he when asked in a data request. I can only conclude that Mr. Pugel did not carefully review or does not understand this report or the issues we face every day in operating this water company. That could be because Mr. Pugel appears to have no experience in operating a water utility business.

In any case, Mr. Pugel ignores that we considered and addressed 27 different water supply alternatives. He also ignores the fact that two new wells have already been drilled since the report was prepared. Mr. Pugel also ignores our continued efforts to reduce water loss—we were at 9.1% in 2006, our efforts to acquire property to build a well field in Strawberry, and the results of our cooperative efforts with the PSWID that, on May 1, 2007, resulted in the K2 Agreement. All of these are addressed in the Report and/or my direct testimony.

Again, water hauling is not our plan or our long-term solution. It is a temporary measure PWCo uses when it has to, and we are all optimistic that it will be a thing of the past once the K2 well is complete.

Q. WHAT ABOUT MR. PUGEL'S CLAIM THAT YOU HAVE FAILED TO CONTACT HIM TO BUY WATER FROM THE MILK RANCH WELL?

A. In just the last two weeks alone, Mr. Pugel has called me "an extremely difficult person with whom to do business", characterized my approach to business as

"distasteful and unprofessional", falsely accused me of making "ignorant statements" and accused me of slander, cited as just one more reason why he does not wish to do business with me. *See* Complainants' Responses to Company's Data Requests 8.4 and 8.6, copies attached hereto as RTH Surrebuttal **Exhibit 2**; Pugel RB at 3, 6. In addition, I have authorized counsel to send three separate letters to Mr. Pugel's counsel since the first complaint was filed in June 2006. In each of these letters, we have expressed a desire to work with Mr. Pugel to extend water utility service to his property. In the most recent letter, we specifically invited him to discuss the possible use of his well to serve our existing customers. *See* Letter from PWCo to Pugel dated April 25, 2007, copy attached hereto as RTH Surrebuttal **Exhibit 3**. I will discuss the Complainants' testimony regarding these will serve letters in more detail in the next section of my surrebuttal testimony. For now, let me say that we have received no response from Mr. Pugel or his lawyer to any of our efforts to work with him, nor has Mr. Pugel made any effort or expressed any interest in selling us water from the Milk Ranch Well, and he has repeatedly said he does not want to do business with me. Yet, he now claims he is waiting by the phone for my call. Pugel RB at 5.

Q. BUT YOU AGREE THAT PWCO CAN USE ADDITIONAL WATER SUPPLIES SO WHY NOT TRY TO BUY WATER FROM THE MILK RANCH WELL?

A. Because the unfortunate reality is that the Milk Ranch Well is in one of the worst possible places for PWCo to deliver water from it to our other customers. The Milk Ranch Well, like the property owned by Mr. Pugel, is located in the southern portion of the CC&N. *See* Map showing PWCo's CC&N and the Pugel well/property, copy attached hereto as RTH Surrebuttal **Exhibit 4**. I would estimate that 80% of our customers are located north and west of the Milk Ranch

Well. In order for us to use water from that well to serve the large majority of our CC&N, we would first have to build 800-1000 feet of a 6" - 8" main from the well to Highway 87. *See* Diagram showing water main line locations, copy attached hereto as RTH Surrebuttal **Exhibit 5.** At that point, the water is still a very long way from the central distribution point of our system and our main storage facility, which is where the water needs to be delivered if we are going to be able to distribute it to customers in Pine and possibly Strawberry.

Q. SO PWCO COULD BUILD THE INFRASTRUCTURE NEEDED TO DELIVER WATER FROM THE MILK RANCH WELL THROUGHOUT ITS CC&N?

A. We could. After spending approximately $30 a foot to build the 800-1000 feet of main line to the highway, we could undertake a project to build a main of sufficient size along Highway 87 for roughly 10,000 feet. In addition to costs estimated to be in excess of $500,000 just for the piping, and the costs of easements and probably a booster station somewhere in north Pine, this project would involve tearing up a State Highway, the main artery through Pine, Arizona, including the area where nearly all of the commercial establishments are located. As I testified, the Milk Ranch Well is poorly located as a water source for the vast majority of our customers.

Q. DID MR. PUGEL DISCUSS THE LOCATION OF THE WELL WITH THE COMPANY BEFORE IT WAS DRILLED?

A. No. If he did, we could have explained the difficulties we now face using this well as a source of water for our customers; just like we did with PSWID when they were considering a well site location in west Strawberry. The circumstances are very similar. And this illustrates the difficulty we face with those who seek to second-guess every management decision we make. Mr. Pugel, despite the fact

that he has no water utility operations experience whatsoever, and others are criticizing the Company because Mr. Pugel found some water. This is not just about finding water.

Q. WHAT DO YOU MEAN?

A. Let me illustrate by way of comparison. There appears to be additional water available to serve our customers in the deeper aquifer, known as the R-aquifer, below Pine and Strawberry. We have reached this conclusion after careful and thorough study, over the past 18 months in particular, through our cooperative efforts with the PSWID. We were studying this alternative water source before Mr. Pugel commenced drilling his well. The result is the selection of the K2 site. Drilling a well at that site has certain key benefits that are easily seen in comparison to our buying water from the Milk Ranch Well.

First, the well site is located immediately adjacent to Project Magnolia, the large, two-mile pipeline connecting Brooke Utilities' water systems in Pine and Strawberry, Arizona. This means that water from that well can be delivered to either community without costly new transmission and distribution infrastructure, the construction of which would seriously disrupt life in Pine, Arizona, as well as impact our customers' rates.

Second, in contrast to buying water on as yet unspecified terms from Mr. Pugel, PWCo will own the K2 well. Given Mr. Pugel's criticism of the Company's water sharing agreements, it seems even he would agree that this is preferable.

Q. BUT MR. HARDCASTLE, YOU WOULD AGREE THAT IT IS UNCERTAIN AT THIS TIME WHETHER THE K2 PROJECT WILL SUCCEED?

A. That is true, just like Mr. Pugel was not sure whether he would find water in the

Milk Ranch Well before he drilled this well. Mr. Pugel's well has never been put to the actual operational test of the "100 Day War" from Memorial Day to Labor Day each year, so we still do not know how much of its production is sustainable. But, we have reason to be optimistic.

First, as I have testified, the selection of the K2 site is the result of several years of study of the concept of a deep well pumping water from the R-aquifer. This is the same analysis that I understand Mr. Pugel relied on in deciding to drill his own deep well.

Second, while no site is perfect and there are no certainties, this site was analyzed by the Complainants' own expert, Mr. Ploughe, on behalf of the PSWID. Mr. Ploughe concluded that the K2 site was "quite adequate for the drilling of a deep test and/or production well." *See* K2 Well Site Evaluation dated May 30, 2006, Bates labeled PWC 01659-PWC 01663, copy attached hereto as RTH Surrebuttal **Exhibit 6**.

Q. DIDN'T MR. PLOUGHE ALSO RAISE SOME CONCERNS WITH RESPECT TO THE K2 SITE?

A. He did, as we would expect any competent analyst to do. For one thing, Mr. Ploughe discussed the fact that other sites might be preferred from a hydrology standpoint. That might be true, but we have to look at more than just hydrology. We have to consider the most economical means of finding water AND delivering it to our customers. This is the same problem most water managers in the region are having in considering use of water from Blue Ridge Reservoir.

Mr. Ploughe also raised concerns over the impact on the environment and on water rights in Strawberry. Mr. Ploughe also expressed that such a site should not be the only thing PWCo does to search for more water for its customers.

Q. ARE THESE LEGITIMATE CONCERNS?

A. Yes, and with the PSWID, we considered these and numerous other issues before making the final decision to enter into a Joint Well Development Agreement with the PSWID on May 1, 2007, for development of the K2 well.[1] Certainly, as expressed throughout my testimony in this litigation, this is not the only thing PWCo is doing to find more water. In addition, while I am not yet aware of any "environmental" concerns, we have considered the possible impact on other, privately-owned wells in Strawberry, Arizona. Based on our analysis, and as confirmed by the K2 project hydrologist, Steve Noel, we do not expect other wells to be impacted because the K2 well is going to a deep aquifer, while the existing wells in Strawberry are all shallow aquifer wells.

Q. IS MR. PUGEL CORRECT (REBUTTAL AT PAGE 4) THAT THE MILK RANCH WELL IS NOT THE FIRST DEEP WELL IN THE PINE-STRAWBERRY AREA?

A. I am not sure. In fairness, I might have overstated this in my direct testimony. I do understand that the owners of the SH3 Well believe that it is also a deep well and I understand it has a depth in excess of 1000 feet. However, I do not know that it is a well that has been drilled into the R-aquifer, which is the source of water for the planned K2 well and for the Milk Ranch Well. I will discuss the SH3 Well later in this surrebuttal testimony.

Q. WHEN WOULD WATER FROM THE K2 WELL BE AVAILABLE?

A. That is something I cannot say for certain because there are still a number of steps to take, some of which are largely outside our control. What I can say is that

[1] The Joint Well Development Agreement has been provided to counsel for each of the Complainants and Staff and will be filed with the Commission in a separate docket in the very near future, at which time it will be incorporated into this docket by reference. For this reason and due to its size, it is not attached, however, for convenience, a courtesy copy is being provided with Judge Nodes' copy of this testimony.

PWCo is currently preparing an application to obtain Commission approval of the agreement with PSWID and that we are absolutely committed to taking every step possible to bring the project to a successful completion at the earliest possible date.

While I expect that this will be of little comfort to our critics, it must be remembered that PWCo is a regulated utility. That means that certain approvals are required from the Commission first, and then from the other agencies that regulate well drilling. It also means that we must act prudently before investing money that we expect to recover through rates. This takes time, but certainly it does not appear to be any less time than it would take for us to build the costly and disruptive infrastructure we would need to deliver water from the Milk Ranch Well to customers throughout our CC&N. That is, assuming the owners of that well were desirous of selling water to PWCo despite the fact that they have given no indication that this was the case. In fact, it appears that the only thing that the owners have done to share their water with the community is to tell the Fire Department that they can have water from the well in an emergency. *See* Complainants' Response to Company's Data Request 8.14, copy attached hereto as RTH Surrebuttal **Exhibit 2**.

Q. WHAT ABOUT USING WATER FROM THE MILK RANCH WELL TO SERVE THE PUGEL AND RANDALL DEVELOPMENT PLANS?

A. I do not know about the Randalls because we still have not seen any development plans. I am not sure formal plans for any development even exist. However, as I discuss in the next section of my testimony, and as Mr. Noel has testified in his surrebuttal (Noel SB at 4), we now see no reason that we could not use that water to extend service to new developments in the immediate vicinity of that well if the parties would enter into a main extension agreement pursuant to A.A.C. R14-2-406 and obtain a variance from the Commission.

Q. WHAT ABOUT MR. PUGEL'S CRITICISM (AT PAGE 5 OF HIS REBUTTAL) OF THE COMPANY FOR RELYING ON WATER SHARING AGREEMENTS?

A. Only one of our water sharing agreements is tenuous. Mr. Gliege, Mr. Pugel's counsel, recently wrote us a letter on behalf of one well owner, Mr. Weekes, who also has a deletion complaint pending. In that letter, Mr. Gliege informed us that Mr. Weekes no longer wishes to share his well water with the community by selling water to PWCo, and is terminating his water sharing agreement for reasons that were not identified. There is also the problem I discussed above concerning the shut down of one of the Solitude Trails Domestic Water Improvement District wells more than a year ago. However, on the whole, I am not aware of any other agreements that can be cancelled like the agreement with Mr. Weekes. We have a great deal of control over the water sources under our various agreements, agreements that have worked very well in producing water for delivery to our customers at reasonable rates. Most of our water sharing agreements have much longer terms than the agreement with Mr. Weekes and/or are not subject to near term cancellation like the agreement with Mr. Weekes.

Q. WHAT WILL BE THE IMPACT OF THE TERMINATION OF THE WATER SHARING AGREEMENT WITH MR. WEEKES?

A. The well at issue is not a large producing well, producing roughly 15,000 gallons per day. Of course, during the "100 Day War", any lost water is unfortunate, but we should have sufficient time to replace this water before the summer of 2008.

Q. HAVEN'T YOU ALSO BEEN CRITICIZED FOR NOT PURCHASING WATER FROM THE OWNERS OF THE SH3 LLC WELL?

A. Yes, in fact we have been accused of failing to make any effort to buy water from this well. The truth is that we tried very hard to make a fair deal with Loren

Peterson to buy water from the SH3 Well.

Q. WHAT EFFORTS DID YOU UNDERTAKE TO BUY WATER FROM THE OWNERS OF THE SH3 WELL?

A. The process started with me sending several letters to Mr. Peterson expressing PWCo's interest in buying any excess water from his well. Our first meeting took place on May 24, 2006 in Payson. Mr. Peterson attended by himself, and I was accompanied by our Customer Relations Representative, Myndi Brogdon. At that time, the well now known as the SH3 Well was owned by Mr. Peterson, not SH3 LLC and not the Strawberry Hollow Domestic Water Improvement District, which that well also serves.

During that meeting, we were presented a draft agreement prepared by Mr. Peterson's lawyer. While we also generally discussed the proposal to sell water to PWCo, it was clear that Mr. Peterson was offering very little supplemental water, approximately 12.5 gpm not to exceed 18,000 gallons per day through an interconnection arrangement. Mr. Peterson also expressed several times that he "expected to take no risk whatsoever" on this business transaction. In addition, Mr. Peterson wanted a sizeable deposit, advance costs for water testing, and advanced operating costs.

I expressed our disappointment. Thereafter, on June 2, 2006, I wrote Mr. Peterson thanking him for his time and interest and notified him that we would get back to him after we had a chance to consider his proposal and the draft agreement.

Q. DID YOU GET BACK TO MR. PETERSON AFTER THAT DATE?

A. Yes, on June 13, 2006, I wrote to him indicating that the draft agreement needed work. In that letter, I expressed that "each of us has a benefit to be recognized by our individual organizations" and expressed our disappointment at the one-sided

nature of the agreement that was proposed. *See* letter from Mr. Hardcastle to Mr. Peterson dated June 13, 2006, copy attached hereto as RTH Surrebuttal **Exhibit 7**. I also identified several examples of our concerns over the agreement including water quality responsibilities, availability charges, sale of additional water, excessive deposit, assignment, and indemnification. I included a redline of the draft agreement we had been provided and, as an alternative, I also attached a copy of our standard Water Sharing Agreement for his review and consideration.

Q. DID MR. PETERSON RESPOND?

A. Yes, roughly two weeks later, after I sent another follow-up message inquiring into the status. On June 29, 2007, Mr. Peterson replied indicating that most of the suggested changes were non-negotiable and he suggested another meeting. So, on July 12, 2006, Ms. Brogdon and I met again with Mr. Peterson in Payson. We had an extensive discussion of the differences in the two parties' versions of the agreement and the meeting was cooperative, professional and friendly. However, Mr. Peterson brought nothing to the meeting by way of an agreement and again expressed his interest in a "no risk" agreement.

Q. WHAT DOES "NO RISK" AGREEMENT MEAN?

A. Mr. Peterson had previously indicated that he was unsure as to the actual sustained pumping capability of his well above 40 gpm because of sanding and silting. As a result, he did not know what production levels he could offer in an agreement with PWCo without risking the ability to use that well to serve the Strawberry Hollow development. So, I made the suggestion of an alternative "test period" of undetermined duration where Mr. Peterson could pump his well into a PWCo interconnection, be paid for his water contribution and, after 60+ days, feel more comfortable in making a firm commitment to PWCo as to the amount of sustained production that was available. I committed PWCo to provide spare pumping

equipment during this period in case Mr. Peterson's pumping equipment became damaged or ruined.

At this same meeting, we also discussed Mr. Peterson's interest in "guarantees" of payment; recovery of well development costs; a term not more than five months per year; Labor Day test line interconnection; and payment timeliness. The meeting was concluded after approximately an hour with Mr. Peterson committing to thinking more about this approach and contacting me in the near future. I followed up the next day with another thank you letter expressing my appreciation and confirmed again our commitment to the alternative approach we had discussed.

Q. WHAT HAPPENED NEXT?

A. On August 7, 2006, I contacted Mr. Peterson because I had not heard back from him since the previous meeting. I was informed that the well filter had been delivered and was to be connected within the month. Mr. Peterson also invited us to investigate how to interconnect the two water systems at Strawberry Hollow in order for PWCo to be ready to purchase water by Labor Day. PWCo's operations personnel began that investigation and I informed Mr. Peterson as such.

Thereafter, I continued to make inquiries through early October 2006 as to the completion status of the filtration system. I was repeatedly advised that material delivery and construction delays had held up implementation of the filter system longer than expected. Then, on October 17, 2006, Mr. Peterson finally invited us to visit the job site to inspect the progress, at which time we could see for ourselves that the filter system was not sufficiently complete to allow an interconnection with PWCo.

Next, on October 19, 2006, I met Mr. Peterson at a PSWID meeting and inquired into the status of the agreement, filter system construction, and asked what

I needed to do to finalize this agreement. Mr. Peterson indicated that he expected to have the filter construction completed in a few days and that he was confident we could reach an agreement.

Q. WHEN DID YOU NEXT HEAR BACK FROM MR. PETERSON ABOUT PURCHASING WATER FROM HIS WELL?

A. I heard nothing further from him for six weeks and contacted him again on December 1, 2006. I indicated that I would be traveling to Pine during the next week and would like to finalize our plans to interconnect the water systems. On December 5, 2006, myself, our operations superintendent, and Ms. Brogdon visited the site. At that time, we concluded that Mr. Peterson was not close to completing the construction necessary to complete the filter installation for an interconnection.

So, on December 11, 2006, I contacted Mr. Peterson advising him of our recent site visit and our concerns over the lack of progress towards interconnection. I received no response and again contacted him on January 2, 2007, requesting his timely reply and information regarding the status of the interconnection. I further advised him that I had directed our operations people to acquire the necessary materials for the water system interconnection (approximately $5,500 in total cost) so we could expedite the interconnection process as soon as he was ready.

Q. HOW DID MR. PETERSON RESPOND?

A. Without any prior notice, on January 3, 2007, he informed me that "[w]e have NO agreement for an interconnection. It is not in the best interests of SH3 LLC to participate at this time in such an interconnection." *See* e-mail from Mr. Peterson to Mr. Hardcastle, copy attached hereto as RTH Surrebuttal **Exhibit 8.** Mr. Peterson went on to say, "The 'Status' is we have **not reached an agreement** and **you seem disinterested in selling the water companies.** It appears we have **reached another impasse.**" Emphasis in original.

I was shocked. On several prior occasions he had expressed optimism that an agreement could be reached for interconnection of the water companies. PWCo incurred thousands of dollars in personnel, materials, engineering, and planning costs related to this project. We were, at all times, serious about reaching an agreement with him to interconnect the two water systems. I have never received any further explanation for Mr. Peterson's sudden and largely unexplained withdrawal from negotiations. That said, I cannot help but think his agreement with Complainant ATM to sell them water if their property is deleted from PWCo's CC&N has something to do with the end of our negotiations. *See* Moriarity DT at 3.

Q. MR. HARDCASTLE, YOU HAVE PROVIDED A LOT OF DETAILS CONCERNING PWCO'S EFFORTS TO BUY WATER FROM THE SH3 WELL AND YOU HAVE CLEARLY KEPT A RECORD OF THESE EFFORTS. WHY IS IT SO IMPORTANT THAT YOU TELL THIS STORY?

A. Because I am constantly being second-guessed and criticized by our opposition in Pine, including Mr. Pugel, for not doing enough to find more water to serve our customers. The specific criticism that we are not buying water from the SH3 Well is an example. We failed to secure another water source, but, as the details I have testified to above illustrate, it is not because we did not try. The statement that we didn't try to buy water from SH3, LLC is an easy statement to make by those that are motivated to cast me and PWCo in the worst possible light. The problem is that such statements are simply not true for the reasons I have explained above.

Q. BUT DOESN'T THE EXISTENCE OF THE MORATORIUM ON NEW CONNECTIONS PROVE THAT PWCO IS NOT PROVIDING ADEQUATE SERVICE.

A. No, although this is what the Developers are trying to have the Commission believe. I have not agreed with all of the Commission's decisions to impose moratoria on new services and main extensions, but the Commissioners have acted in furtherance of the public interest in the manner they felt was necessary. In fact, the Commission first imposed a moratorium on main extensions in 1989, roughly seven years before Brooke Utilities acquired the system. *See* Decision No. 56539 (July 12, 1989). Further, in our last rate case, it was acknowledged and agreed that we face "extraordinary water supply problems" in our CC&N and that "there remain substantial questions and disagreements concerning the availability, cost and risks associated with exploring for and obtaining additional water supplies for use in serving" our customers. *See* Decision No. 67166 at 10, ¶ 26 and Attachment A, ¶ 14.

In summary, from my vantage point, this is a serious problem. However, it is not a problem that we caused, nor is it a problem that we have not continuously tried to solve within the constraints we face every day operating a water company in Pine, Arizona. This is what I have tried to show with my testimony above.

III. MAIN EXTENSIONS AND VARIANCE FROM MORATORIA ON NEW SERVICE CONNECTIONS.

Q. MR. PUGEL TAKES ISSUE WITH YOUR TESTIMONY THAT THE COMPLAINANTS WANT SPECIAL TREATMENT. WOULD YOU PLEASE EXPLAIN YOUR TESTIMONY?

A. The Commission's main extension rules allow PWCo to require developers, like the Complainants, to provide advances in aid of construction for the reasonable

cost of all mains, including all valves and fittings, and additional facilities that are required to provide pressure, storage or **water supply**, exclusively for the new service or services requested, and the cost of the additional facilities is disproportionate to anticipated revenues to be derived from future consumers using these facilities. *See* A.A.C. R14-2-406. In addition, I understand that main extension agreements frequently require the developer to include in any required advance the cost of engineering, legal accounting and other administrative costs and overhead incurred in connection with the extension of service. The Complainants appear categorically unwilling to enter into such agreements with PWCo.

Q. HAS PWCO OFFERED TO ENTER INTO MAIN EXTENSION AGREEMENTS WITH THE COMPLAINANTS?

A. We have sent two different will serve letters to the Pugels and the Randalls and have also indicated our willingness to pursue a main extension with ATM. None of the Developers have indicated a willingness to move forward to work with PWCo.

Q. WHY ARE THE COMPLAINANTS UNWILLING TO PURSUE MAIN EXTENSION AGREEMENTS WITH PWCO?

A. I believe that the rebuttal testimonies filed by Mr. Pugel and Mr. Moriarity provide some insight into their desire to avoid the process regulated utilities like PWCo generally follow. For example, Mr. Pugel claims that requiring contributions in aid of construction that are not paid back in full would constitute a taking of his property without just compensation. Pugel RB at 4-5.

Q. HOW DOES PWCO RESPOND TO THIS CLAIM?

A. For one thing, PWCo's will serve letters indicate that necessary facilities would be provided as advances and/or contributions in aid of construction, not just

contributions which are not subject to refund. In addition, our most recent letter to the Pugels and the Randalls evidence PWCo's willingness to consider refunds that exceed the minimum 10% refund for 10 years. *See* Will Serve Letter regarding Mr. Pugel's property dated April 25, 2007, copy attached hereto as RTH Surrebuttal **Exhibit 3**. But I certainly do not believe that the Commission's rules allowing the Company to require advances in aid of construction for mains, wells and other infrastructure constitute a taking of their property.

Q. DOES MR. PUGEL HAVE TO "ADVANCE" THE MILK RANCH WELL IN ORDER TO OBTAIN AN EXTENSION OF SERVICE?

A. Not necessarily. Mr. Pugel has a choice of what water supply is advanced. He could drill a second well and keep the Milk Ranch Well, or he could advance funds so we could drill a second well. He could use some sort of water sharing agreement limited to serving his developments. There are a number of possibilities, none of which can be explored without his willingness to start the process.

Q. WHAT ABOUT MR. PUGEL'S TESTIMONY THAT NO MAIN EXTENSIONS ARE REQUIRED IN ORDER FOR PWCO TO SERVE HIS PROPERTY?

A. Mr. Pugel is wrong. Mr. Pugel claims that "water lines are to the property at this time. Pugel RB at 5. *See also* Pugel RB at 3 (the property has a main line running down the street). In a recent data request response, Mr. Pugel further claims that his "condo project is across the street from my home. I am connected to a meter." *See* Complainants' Response to Company's Data Request 8.3, copy attached hereto as RTH Surrebuttal **Exhibit 2**. The main that Mr. Pugel appears to believe can be used to serve his developments is actually an undersized, dead-end 3 inch main. *See* Diagram showing water main line locations, copy attached hereto as RTH

Surrebuttal **Exhibit 5.** This water main would not be adequate for serving an RV park and 40 condominiums. Additionally, we have no facilities whatsoever within Mr. Pugel's property that could be used to serve these developments.

For these reasons, our will serve letters indicate the need for engineering and other analyses as the first step in the extension of service. Unfortunately, Mr. Pugel also takes issue with the requirements that the Developers advance funds for engineering, hydrology, accounting, legal and other administrative costs. Pugel RB at 2. In fact, in a recent data request response, the Developers declared the request that such costs be advanced to be "hypothetical and moot" because no main extension is required. *See* Complainants' Response to Company's Data Request 8.17, copy attached hereto as RTH Surrebuttal **Exhibit 2**. These are among the reasons that I testified to my belief that the Complainants want "special treatment". They simply refuse to follow the Commission's main extension process.

Q. DO YOU BELIEVE THAT THE COMPANY'S WILL SERVE LETTERS ARE CONSISTENT WITH THE COMMISSION'S MAIN EXTENSION RULES?

A. I do, but the Developers do not. In a data request response, the Developers alleged that our will serve letters violated A.A.C. R14-2-406. When we asked for further explanation, we were told that the will serve letters are unlawful because we did not provide a copy of the Commission's main extension rules and because we did not provide a preliminary sketch and rough cost estimate. *See* Complainants' Response to Company's Data Request 7.6, copy attached hereto as RTH Surrebuttal **Exhibit 2**. This is ridiculous.

First, the rules state that a copy of the Commission's rules shall be provided before an extension agreement is entered into by the applicant for service. A.A.C. R14-2-406.B.3. The Developers refuse to even discuss a main extension

agreement with the Company. Not to mention that if they can cite the rules as the bases for problems with our will serve letters, they must already have the rules themselves.

Second, the rules require a preliminary sketch and cost estimate upon request. No such request has been made by any of the Complainants. A.A.C. R14-2-406.B.2. Again, it appears that the Developers prefer to litigate rather than work with us towards an extension agreement to be followed by a request for a variance to Commission decisions that prevent PWCo from new connections.

Q. ISN'T THIS BECAUSE PWCO HAS NOT "GUARANTEED" THAT IT CAN OBTAIN A VARIANCE FROM THE COMMISSION MORATORIA ON NEW CONNECTIONS AND MAIN EXTENSIONS?

A. This does appear to be another reason offered by Mr. Pugel to not move forward to work with PWCo. *See* Pugel RB at 2. The Developers do not believe that it is "good business" to expend any sums before they know that the Commission will grant a variance. *See* Complainants' Response to Company's Data Request 8.18, copy attached hereto as RTH Surrebuttal **Exhibit 2**. Unfortunately, these are the costs of development and PWCo has no authority to guarantee that the Commission will grant the necessary variance.

Q. COULDN'T PWCO SEEK A VARIANCE FIRST AND THEN ENTER INTO MAIN EXTENSION AGREEMENTS?

A. I am sure we could ask, but I do not believe the Commission would grant the request before there is even a signed will serve letter, let alone an agreement to reflect not only the actual request for service but the means by which that service will be extended. Further, we do not believe that PWCo or its existing ratepayers should bear the cost of these new developments. This is why we have tried to follow a typical main extension process. Once we have concrete development

plans, concrete plans of how service will be established and an agreement with the Developers, an agreement that includes the advance of infrastructure, including water supply facilities, I believe the parties have the bases to obtain a variance from the Commission. Until then, we would be asking for a variance based on little more than speculation.

Q. WHY HASN'T PWCO GIVEN THE DEVELOPERS A TIME FRAME WHEN SERVICE CAN BE ESTABLISHED?

A. For the same reasons that we are in this litigation—the Developers' refusal to work cooperatively with PWCo precludes us from even making an educated guess as to when service can be established. First, we need to have them agree to pursue a main extension by starting the process, conducting the necessary analyses and negotiating written extension agreements. Then we need to seek a variance. All that takes time and the Developers refuse to even bring their horses to the starting gate.

Q. WHAT ABOUT ATM, WHICH CLAIMS THAT IT DOES NOT HAVE A WATER SUPPLY THAT PWCO CAN USE TO SERVE THE EAGLE GLEN DEVELOPMENT?

A. I agree this is an obstacle, and it is the reason we have not yet sent a formal will serve letter to ATM. Nevertheless, as I testified in my direct, we have expressed a willingness to proceed on terms similar to those offered to the other developers. Hardcastle DT at 16-17. I cannot say that ATM's lack of a water source that PWCo can use to serve Eagle Glen is a problem that cannot be solved. But, until ATM shows a willingness to work with PWCo to achieve an extension of service, there is nothing we could do to explore options for extending service.

Q. IN YOUR DIRECT TESTIMONY (AT PAGE 22) YOU INDICATED THAT WATER FROM THE MILK RANCH WELL MIGHT BE USED TO SERVE EAGLE GLEN. IS THAT STILL POSSIBLE?

A. "Possible," yes, but it would be very costly for the reasons I have explained above in my testimony. I do not know whether ATM would be willing to shoulder such costs.

Q. IS MR. MORIARITY CORRECT THAT PWCO DECLINED HIS REQUEST FOR 43 NEW METERS AND TOLD HIM THAT IT WOULD TAKE 12 YEARS ON THE COMPANY'S WAITING LIST?

A. Mr. Moriarity is correct that his initial request for a main extension was declined due to the Commission's moratoria on new connections. But I do not know who he called, nor is there any record of what he was told regarding the meter waiting list.

Q. IN HIS REBUTTAL TESTIMONY (AT PAGES 5-6), MR. PUGEL ACCUSES YOU OF PROVIDING "BIASED, FALSE INFORMATION" AND "RESORTING TO SLANDEROUS PERSONAL ATTACKS" BY STATING THAT THE DEVELOPERS DO NOT BELIEVE THAT THEY SHOULD BE SUBJECT TO CONSERVATION REQUIREMENTS. DO YOU WISH TO RESPOND?

A. Yes. For starters, it is most unfortunate that this situation has degenerated so far. I guess Commissioner Pierce was correct when he said at the recent Town Hall meeting in Pine that "in Arizona, liquor is for drinking and water is for fighting." In any event, my testimony was based directly on the Developers' responses to data requests, data requests I attached to my direct testimony. Hardcastle DT at 23 and Hardcastle DT Exhibit 1. For example, in response to data request 4.3, the Developers stated that if they were not in PWCo's CC&N they would not be subject to the Curtailment Tariff. *Id.* This is a very important conservation

requirement in Pine, Arizona. Similarly, in response to data request 2.13, these same Developers complained that PWCo could not guarantee that if they provided their own water that they would not be subject to water use restrictions. *See* Complainants' Response to Company's Data Request 2.13, copy attached hereto as RTH Surrebuttal **Exhibit 2**. Now, in his rebuttal testimony, Mr. Pugel says he wants to be like several County water improvement districts, none of which have any conservation requirements. Pugel RB at 3. It sure sounds to me like these Developers do not want to be subject to any sort of conservation requirements.

Q. ISN'T IT POSSIBLE YOU HAVE MISUNDERSTOOD?

A. Anything is possible. But if I did misunderstand, Mr. Pugel could have clarified, rather than accuse me of lying and slandering him. But that was only one of the places in his testimony where Mr. Pugel resorts to personal attack. The worst of all examples is Mr. Pugel's claim that I told him that I prefer to "work in an adversarial and confrontational manner rather in a cooperative manner." Pugel RB at 3. This is false.

Q. DID YOU ENGAGE IN DISCUSSIONS WITH MR. PUGEL ABOUT WORKING COOPERATIVELY AS HE TESTIFIES AT PAGE 3 OF HIS REBUTTAL?

A. Not exactly. Several years ago Mr. Pugel tried to insert himself into PWCo's dispute with Gila County over formation of an improvement district in and adjacent to our CC&N. During that meeting, I distinctly recall stating that "I work in a stressful and adversarial environment." *See* Complainants' Response to Company's Data Request 8.4, copy attached hereto as RTH Surrebuttal **Exhibit 2**. It is this statement that Mr. Pugel has both taken out of context and, at best misstated for his own use in his rebuttal testimony.

A short while after that, Mr. Pugel approached me and we had another

meeting. This time he wanted me to "cooperate" with a petition drive he was initiating to get the community to acquire PWCo. Mr. Pugel came to me and tried very hard to convince me to support his efforts to take over our water company. Incredulously, I asked "why would I want to sabotage our own company by supporting his petition drive." His response was to the effect of "because it is in the best interest of me and the community." Like I said, Commissioner Pierce's statement that "water is for fighting" appears to be quite true in Pine, Arizona.

Q. FINALLY MR. HARDCASTLE, BOTH MR. PUGEL AND MR. MORIARITY TESTIFY THAT PWCO HAS FAILED TO PRESENT ANYTHING TO INDICATE THAT THE COMPANY IS ABLE TO PROVIDE ADEQUATE WATER SERVICE AT REASONABLE RATES TO THE PARCELS OF PROPERTY THAT ARE THE SUBJECT MATTER OF THIS PROCEEDING. DO YOU AGREE?

A. No I do not. The problem we have and the reason we are here is because the Developers do not want to follow a process that PWCo is required to follow if it wishes to avoid placing the burden of new development on itself and/or its existing ratepayers. Again, this is why I have testified that they want special treatment. Whether this is because they simply do not want to do business with Bob Hardcastle and PWCo, or because they think the process is unfair or unlawful is not really for me to say. The fact is that each of the Developers knew or should have known when they bought the properties subject to this litigation that they were in PWCo's CC&N, that PWCo is a public service corporation regulated by the Commission, and that due to the extreme circumstances we face every day operating in Pine, Arizona, that certain restrictions exist on our ability to extend service.

But this does not mean we cannot extend service. It just means there is a

different and lengthier process for everyone involved. That may be inconvenient and more costly, but the Commission has decided that this is what is necessary to protect the public interest. Now, it is up to the Developers to respond to our efforts to work cooperatively within the regulatory process to extend service. The Developers have refused, and as a result we are stuck in this litigation.

Q. DOES THAT CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, although I wish to point out that my silence concerning anything contained in any of the Complainants' prefiled testimony in not intended nor should it be construed as PWCo's agreement with such testimony.

1912248.3/75206.010

RTH SURREBUTTAL
EXHIBIT 1

SOLITUDE TRAILS DOMESTIC WATER IMPROVEMENT DISTRICT

FILE COPY

February 20, 2006

Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380

Re: Portal III Well #55-547869; Meter #D62560

Dear Mr. Hardcastle;

Thank you for your letter of February 14, 2006. Since the above mentioned meter indicated negative production, and per your opinion, it may mean a reverse installed meter or failed meter. Yet it may also mean that your water lines are over pressured, thereby forcing water back down the well.

Please be advised that until such time as we determine the cause of negative production and repair it, the Solitude Trails Domestic Water Improvement District Portal III Well will be unavailable for production. In the event meter readings of this meter are replaced or altered, you will be notified of this modification so that you may confirm it.

If you have any questions, pleas contact us.

Sincerely,

Mark J. Fumusa
Chairman

RECEIVED
FEB 27 2006
BY:

Cc: Paula Brandt
Harry Jones
ACC

P.O Box 233 Pine, Arizona 85544
928-476-4141 fax#928-476-4160

RTH SURREBUTTAL
EXHIBIT 2

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

2.13 Are Complainants willing to enter into extension agreements with the Company pursuant to which Complainants agree to finance utility facilities, including, without limitation, water sources sufficient to meet the demand associated with the development plans identified in response to data request 2.1? If the answer is in the negative, please explain the bases for the answer.

ATM & Pugel et al: Object to the question to the extent that it is speculative and assumes many facts which may or may not be true. Nevertheless, when the Company obtains the variance from the ACC Order prohibiting any further development and the Company can guarantee adequate water service at reasonable rates, the Complainants will consider such agreements, so long as such agreements do not negatively impact the property of the Complainants. It is the position of the Complainants, right now, that even if they provided the water that their development requires there is no guarantee that the Company could or would obtain a variance from the ACC to the moratorium. Further, even if the Complainants provided the necessary water for their development because of the inadequate supply and storage of water of the Company this would not guarantee that the Complainants' property would not be subject to all water use restrictions placed upon the company by the ACC and in times of Company wide water shortages that the water supplied by the Complainants would not be combined with the remaining water of the Company and allocated throughout the community in reduced amounts, depriving the Complainants or their successors in title, of adequate water at reasonable rates. For example, if the Complainants were to provide the water sufficient for their development and the company experienced a system wide water shortage, unless their water is isolated for use solely by them, the Complainants or their successors, would not be entitled to all the water they have provided, and their water use would be curtailed. Further, the Complainants believe that if they provide the water to serve their developments, they should not be required to pay the pass through charges for water hauling. Thus the Company would also have to change this tariff.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

7.6 In response to data request 5.10(c), Complainants claim that the proposed will serve letters sent to the Pugels and the Randalls do not comply with AAC R14-2-406. Please explain the basis for this claim, including identifying all aspects of the Company's proposed will serve letter that are contrary to this rule.

AMENDED RESPONSE: The Complainants Pugel and Randall assert that the proposed "will serve" letters are deficient and fail to comply with the rule for the following reasons:

1. Pine Water Company has not prepared and submitted a preliminary sketch and rought estimate of the cost of installation to be paid by the applicant pursuant to AAC R-14-406 B 2.

2. The Applicant has not been supplied with a copy of the Commission rules on main extension agreements pursuant to AAC R-14-406 B 3.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.3 In his rebuttal testimony at page 3, Mr. Pugel states that there is a main water line running down the street adjacent to the property he proposes for development as condominiums. Please state the basis for this testimony including identifying the owner of this main water line and providing a map showing the line's location in relation to Mr. Pugel's property and PWCo's other utility infrastructure.

Ray Pugel responds: The condo project is across the street from my home. I am connected to a main line. You may follow the water meters to the south of my home that would be connected to the main line.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.4 Please provide all documentary or other support for Mr. Pugel's testimony at page 3 of his rebuttal that Mr. Hardcastle "prefers to work in an adversarial and confrontational manner rather than in a cooperative manner."

Ray Pugel Reponds: This occurred when Mr. Hardcastle and Loren Peterson were feuding and heading towards litigation over Strawberry Hollow. I asked Loren if I could meet with Mr. Hardcastle to try and mediate the situation. He said I could. Mr. Hardcastle and I met at Fargo's restaurant for lunch. I tried to get Mr. Hardcastle to talk out his differences and negotiate with Loren to avoid a lawsuit. At that time, Mr. Hardcastle advised me that he was at his best in confrontational and adversarial situations. I had never had any business person in all my years say such a ignorant statement. It left a clear, distinct, and unforgettable impression on me. After that meeting, I realized the kind of person we were dealing with and realized there was little hope of working out challenges with this type of person. Consequently,Mr. Hardcastle and Mr. Peterson litigated, spent hundreds of thousands in legal fees, for a settlement of some small amount of money and allowing Strawberry Hollow out of the Pine Water Company CC&N. At this point in time Loren began the steps to proving a 100 year water adequacy which he received.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.6 Has Mr. Pugel or anyone else associated with the Milk Ranch Well ever indicated to Pine Water Company or any of its representatives that there is an interest in selling, leasing or otherwise providing an interest in the Milk Ranch Well to Pine Water Company? Please provide any and all documents and/or identify any evidence supporting your response.

RESPONSE: Mr. Pugel does not believe that it is his obligation to approach Pine Water Company. If Mr. Hardcastle is interested in obtaining water from the Milk Ranch Well he can certainly contact Mr. Pugel. Mr. Pugel is interested in helping the citizens of Pine and is willing to provide water for the citizens of Pine. Based upon his contacts with Mr. Hardcastle and his observations as to the way Pine Water Company conducts its business Mr. Pugel does not believe that Mr. Hardcastle shares this interest and is an extremely difficult person with whom to do business. Only if there are no other viable legal alternatives is Mr. Pugel interested in doing business with Pine Water Company under the leadership of Mr. Hardcastle. Mr. Pugel believes that the Milk Ranch Well LLC project shows that there is water under Pine, contrary to the position taken repeatedly by Mr. Hardcastle that there is not, and that such water can be used for the benefit of the citizens of Pine.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.14 Please describe and provide all documents, notes, correspondence and other evidence reflecting all efforts undertaken by the owners of the Milk Ranch Well to sell, exchange, contribute or otherwise dispose of the excess water. For purposes of this data request 'excess water" would be any water that can be produced from this well above the amount needed for Mr. Pugel and/or Mr. Randall's development plans as such demands was testified to by Mr. Ploughe in his rejoinder testimony.

RESPONSE: Water has been offered to the fire department in the event of an emergency.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.17 Is it Complainants' position that Pine Water Company should incur engineering, legal, accounting, hydrology, and/or other costs arising out of the extension of service to new development in contrast to obtaining reimbursement for such costs from applicants, landowners, and/or developers seeking an extension of service?

RESPONSE: Since main line extensions do not appear to be needed for these properties in light of existing service lines this question is hypothetical and moot. In any instance of a request for service an allocation of the costs of providing such service between the applicant and the Water Company must be taken into account.

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

8.18 What is the basis for Complainants' position that Pine Water Company should "guarantee" that the Commission will grant a variance to the moratorium on new connections and main extensions?

RESPONSE: Pine Water Company is requesting that the parties enter into agreements and make payment to Pine Water Company of monies for the costs of studies, engineering and design and yet Pine Water cannot guarantee that once all of this money is expended, regardless of amount, the Arizona Corporation Commission will lift the moratorium heretofore imposed and allow the connection of any improvements to be constructed on the Complainants' property to occur. To expend what in all likelihood will be large sums of money without a reasonable certainty that the project will be allowed to connect to the water system would not be a good business decision.

RTH SURREBUTTAL
EXHIBIT 3

FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600
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April 25, 2007

Via Email and U.S. Regular Mail

John Gliege, Esq.
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, Arizona 86002-1388

Re: Will Serve Letter—Property Owned by Raymond R. Pugel and Julie B. Pugel as Trustees of the Raymond R. Pugel and Julie B. Pugel Family Trust

Dear Mr. Gliege:

When we met on Friday April 13, 2007, you indicated that you and your clients were confused over certain aspects of Pine Water Company's ("PWCo") October 25, 2006 Will Serve letter. Specifically, you expressed that your clients would benefit from clarification with respect to (1) the necessary engineering and hydrology analyses; (2) refunding of advances in aid of construction; and (3) payment for water from the Milk Ranch Well in excess of the amount needed to serve your clients' developments. This Will Serve Letter is intended to address these expressed concerns.

As previously indicated, PWCo is willing to work with your clients, Raymond R. Pugel and Julie B. Pugel as Trustees of the Raymond R. Pugel and Julie B. Pugel Family Trust ("Landowners") to extend service to Landowners' real property located in PWCo's CC&N (the "Property"). Such extension of service will require the parties to enter into extension agreements consistent with the Arizona Corporation Commission's rules and regulations, and to seek a variance to the Commission-imposed moratoria on main extensions and new connections set forth in Decision No. 67823 (May 5, 2005).

At present, PWCo does not serve any customers in the portion of its CC&N that includes the Property, and, as such, does not have any wells or other infrastructure that can be used to extend service to the Property. As a consequence, the first step is to conduct

engineering and hydrological analyses to determine the means by which water utility service will be extended to the Property. There are essentially three parts of this analysis commencing with provision by the Landowners of all development plans for the Property. This information is necessary for the parties to determine the projected average and peak water demand related to the Landowners' plans for development of the Property. The hydrology portion of this analysis will focus on confirmation of the production of the Milk Ranch Well, which we understand your clients have drilled within the Property, and well tests needed to ensure that production from that well is sustainable.

Finally, an engineering analysis needs to be conducted to determine what facilities, both on-site and off-site, are necessary for PWCo to extend service. While it is assumed that the Landowners would prefer to build and then convey any on-site infrastructure as an advance in aid of construction, it is unclear from the information PWCo has been provided to date whether the Milk Ranch Well would be interconnected with PWCo's existing water distribution system. This information would also be used to develop the detailed cost estimates that must accompany an extension agreement. Once a determination has been made regarding the appropriate method of supplying and distributing water to the Property, formal plans and specifications for any necessary water utility facilities will have to be prepared and submitted to the Arizona Department of Environmental Quality for review and approval.

The Landowners and PWCo will then enter into a written facilities extension agreement governing the extension of service. Depending on the outcome of the engineering and hydrological analysis, additional agreement such as a utility plant site may also be necessary. In total, these agreements, once the necessary Commission approvals are obtained, will govern the formal conveyance of any facilities to be provided by Landowners to PWCo via bill of sale along with all necessary warranties, easements and rights-of-way. These conveyances will be in the form of advances in aid of construction. Additional advances in aid of construction will be required of Landowners for administrative and third-party expenses to be incurred by PWCo in connection with the extension of service to the Property. Such expenses include third-party costs for engineering and inspection, hydrology, accounting and legal services.

The Commission's rules and regulations governing extensions require that PWCo pay a minimum annual refund for 10 years in an amount equal to ten percent (10%) of the gross annual operating revenues, which is all revenue collected, exclusive of any taxes or pass-through costs, from the sale of water utility services by PWCO to bona fide customers within the Property. Under certain circumstances, refunds in a different amount, or for a different

period of time are appropriate, but PWCo cannot say until the necessary engineering and hydrologic analyses are completed whether it would be willing to deviate from the established minimum refund requirements. Whatever refund provisions are agreed to and then approved, at the end of the refund period, any unpaid balance becomes a non-refundable contribution in aid of construction under Commission rules and regulations.

Following execution of this will serve letter, the parties will need to discuss how the above analyses will be conducted and how responsibility will be allocated. Under any scenario, PWCo will also require a deposit towards its incurrence of the administrative expenses identified above. Landowners will be responsible for further payment of administrative costs pursuant to the parties' extension agreement.

Following execution of the necessary agreements by the parties, one additional step must be taken, that is seeking a variance from Decision No. 67823, which prohibits new connections and main extensions in PWCo's CC&N. We understand that the Landowners are reluctant to proceed without knowing that a variance will be obtained; however, we do not believe the parties would be in position to support a request for a variance until the necessary hydrology and engineering analyses have been completed and the necessary agreements have been executed. That said, PWCo is optimistic that a variance would be granted if the Landowners' claims regarding the Milk Ranch Well are proven accurate.

Finally, you have asked about payment by PWCo for water or for the Milk Ranch Well to the extent that the well can produce water in excess of the amount needed to extend service to the Property. Whether there is excess water, and whether that water can be economically delivered to other customers is presently unknown, and requires completion of the analysis discussed herein. However, PWCo does <u>not</u> expect to get something for nothing. In other words, PWCo expects that it would have to pay the Landowners for any additional water that PWCo uses to serve its other customers, either through a water purchase agreement, the acquisition of an interest in the well, and/or purchase of the well to the extent its production exceeds what is needed to extend service to the Property.

I hope this letter clarifies the issues you indicated needed clarification. As we have expressed since June, 2006, PWCo would prefer to work cooperatively with you and your clients in a manner that allows for the development of the Property. If your clients are ready to do so, please have this letter executed below.

Meanwhile, please feel free to contact me if you have any questions or require any additional information.

Very truly yours,

Jay L. Shapiro

cc: Robert T. Hardcastle

ACKNOWLEDGED AND APPROVED:

Raymond R. Pugel, Trustee of the Raymond R. Pugel and Julie B. Pugel Family Trust

_____

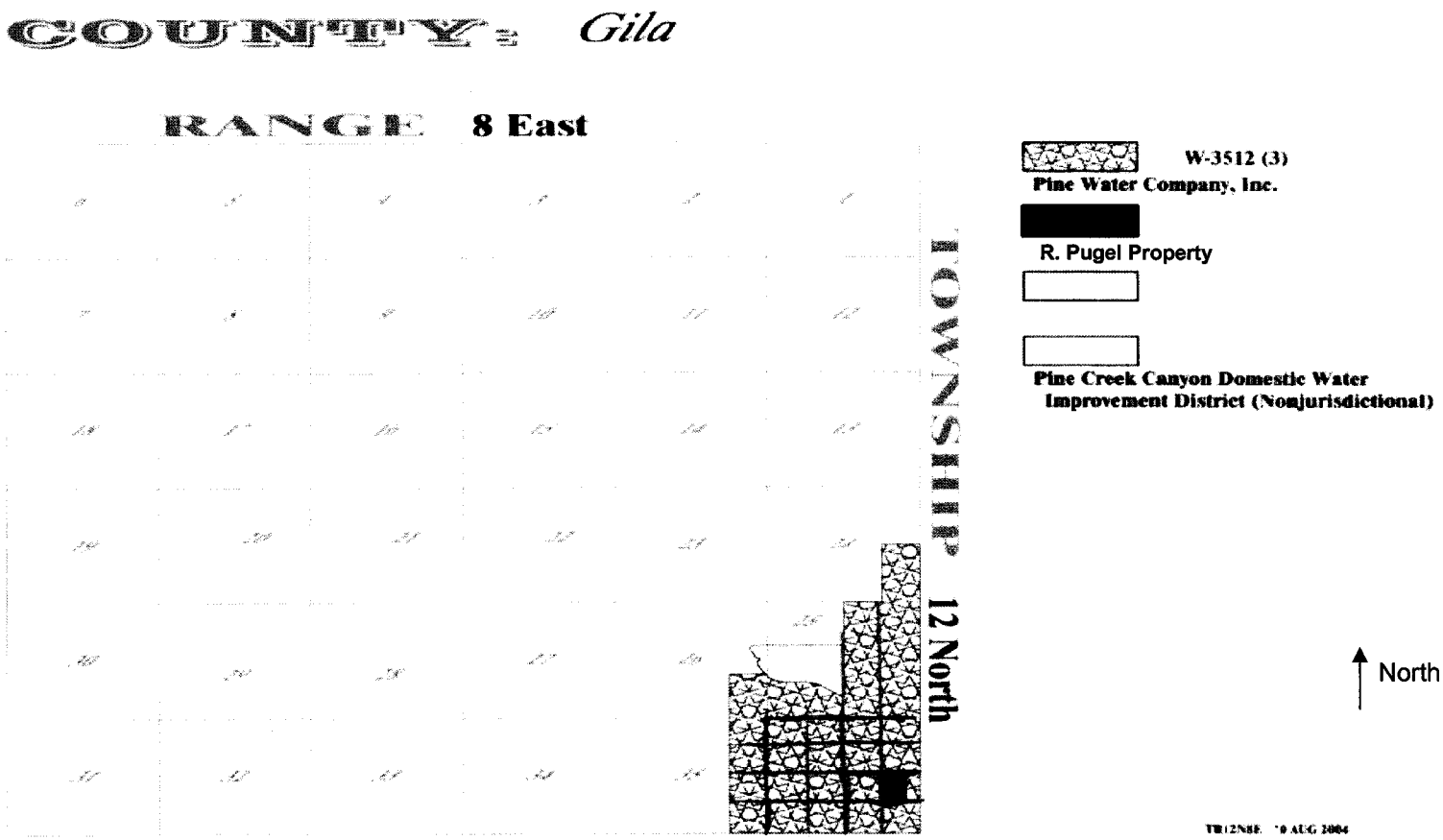
Julie B. Pugel, Trustee of the Raymond R. Pugel and Julie B. Pugel Family Trust

_____

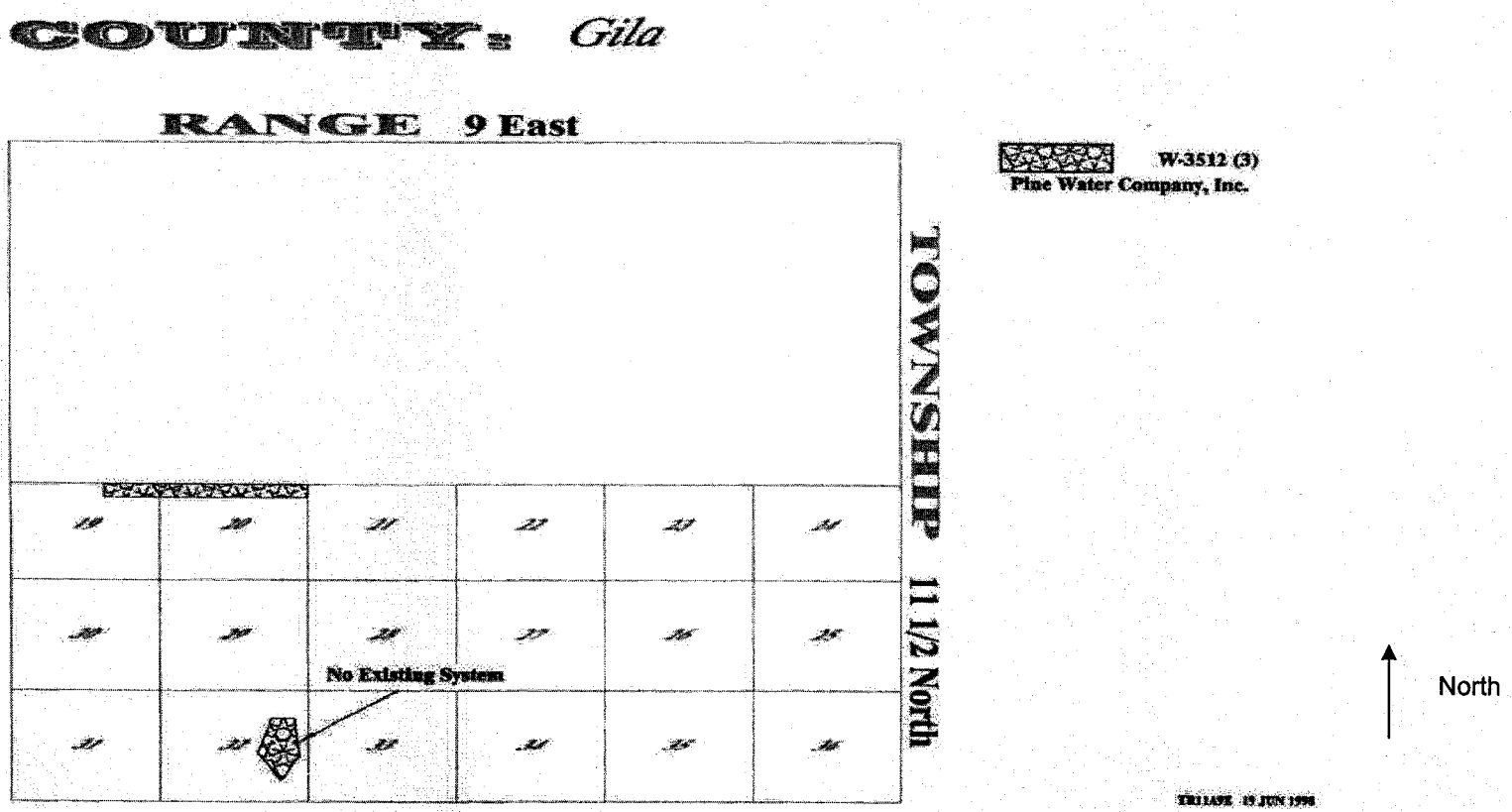
1908329/75206.010

RTH SURREBUTTAL EXHIBIT 4

Pine Water Co., Inc.
CC&N



Pine Water Co., Inc.
CC&N, Continued



Pine Water Co., Inc.
CC&N, Continued

Map No. 21

COUNTY: *Gila*

RANGE 9 East

TOWNSHIP 12 North

W-3512 (3)
Pine Water Company, Inc.

Solitude Trails Domestic Water Improvement District (Nonjurisdictional)

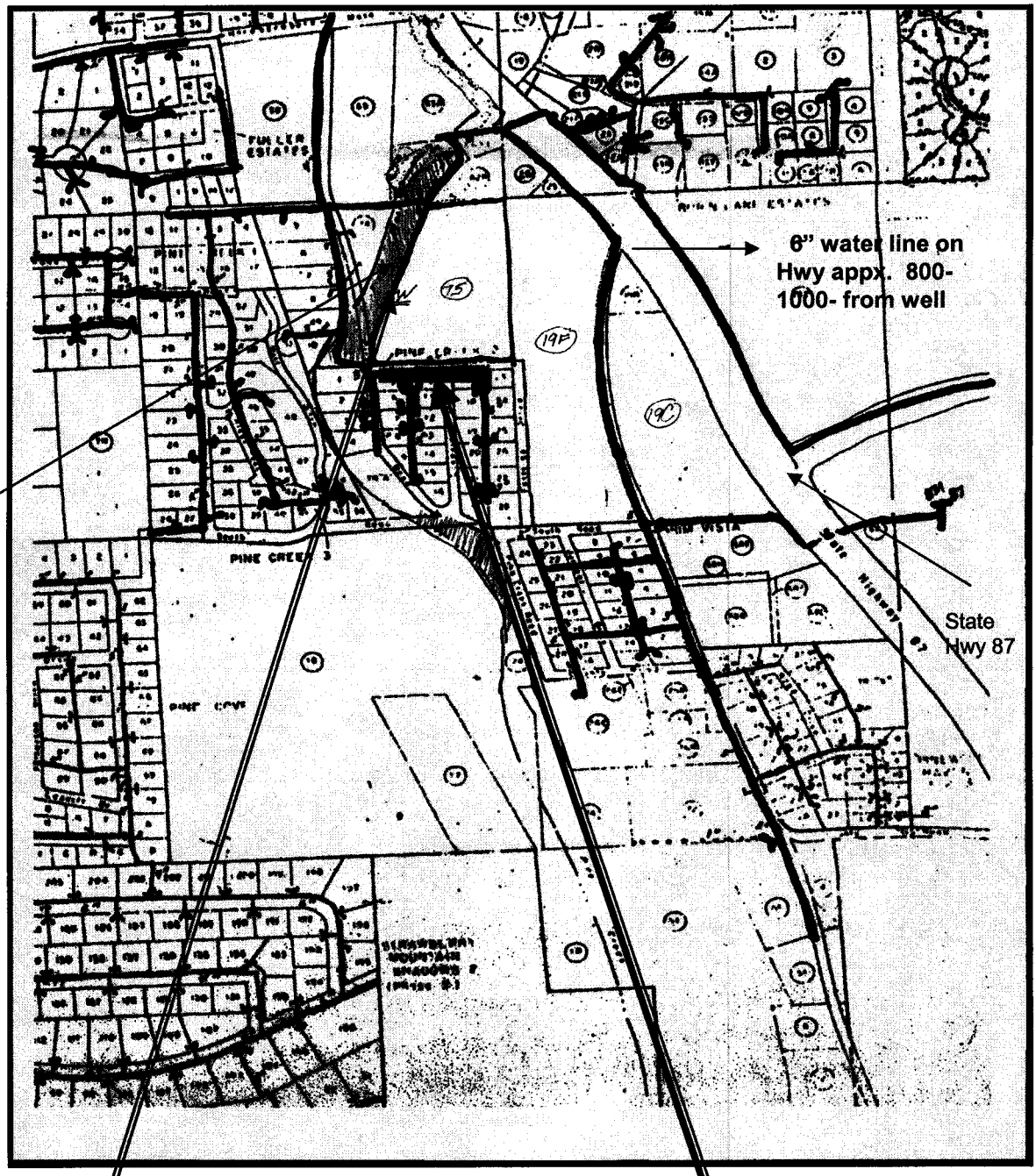
North

TREDOK 19 JUN 1996

RTH SURREBUTTAL
EXHIBIT 5

Pine Water Co., Inc.
Water Main Line Locations Near Pugel Well

Blue lines indicate Pine Water Company, Inc. Water Mains



Pugel property and *approximate* location of well. Well is less than 100' from Pine Creek

Pine Water Co. Inc.'s 3" water line located on Rimview Drive is is appx 500' – 800' from subject well. This 3" water line is undersized for well connection

RTH SURREBUTTAL
EXHIBIT 6

May 30th, 2006

PSWID
Attn. Wes Suhr
P.O. Box 134
Pine, AZ 85544

RE: K2 Well Site Evaluation -- Groundwater Resources Potential

Dear Mr. Suhr:

Upon the May 18th, 2006 approval and direction of the PSWID board, Highland Water Resources Consulting Inc. (HWRC) has completed its evaluation of the groundwater resources potential at the "K2" well site. The K2 location was considered in light of the local structural geology and both the deep regional and shallower perched groundwater systems. The evaluation focused on the structural geology in the vicinity of the site via a photo lineament analysis. Additionally, data presented in recent publicly available reports of the SHDWID, PSWID, USGS, and ADWR were considered as well. The ongoing Mogollon Study "MRWRMS" has produced a few draft documents of late and is currently wrapping up. However, preliminary data of the MRWRMS available to the public is also considered. The findings of the K2 investigation are presented in this five page letter report.

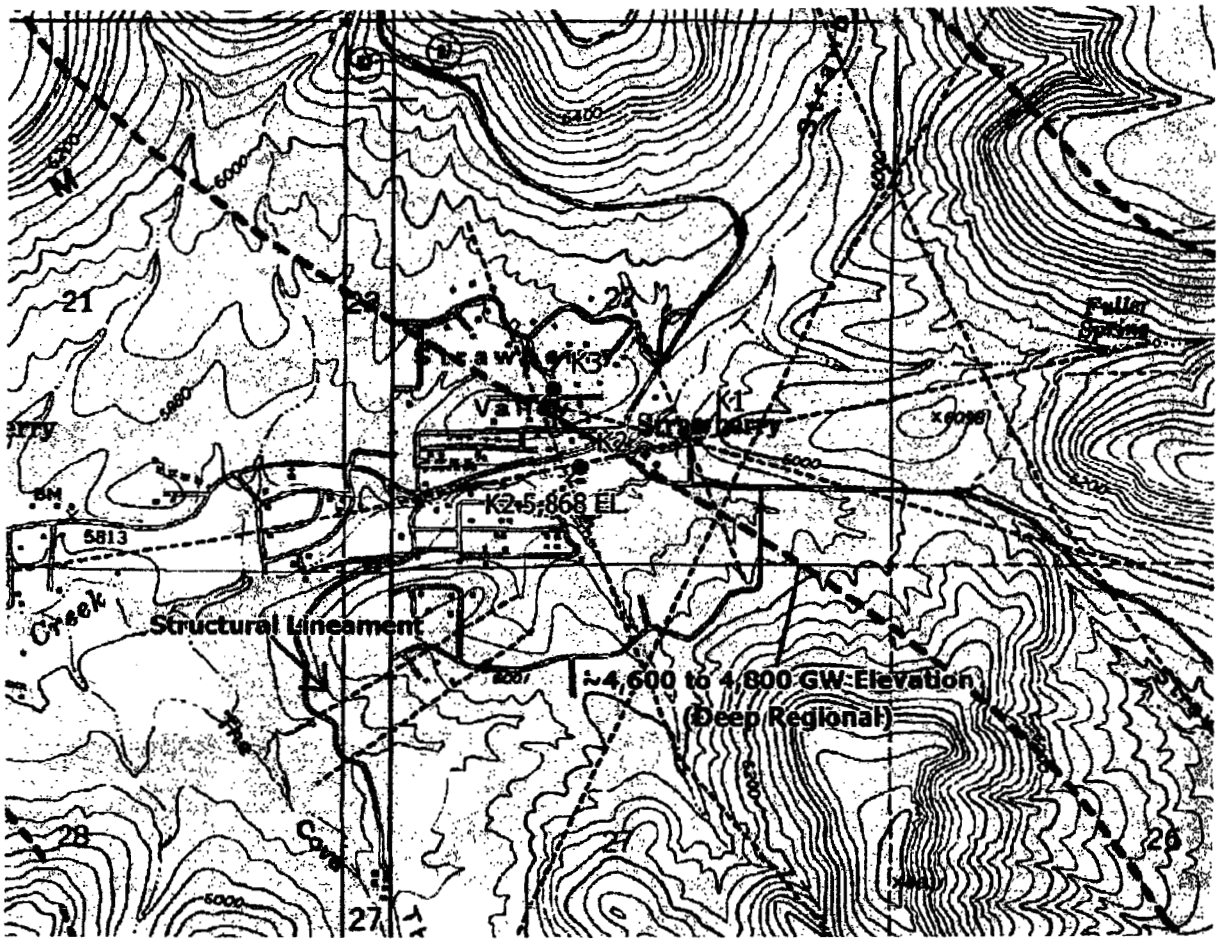
K2 WELL SITE LOCATION

The K2 well site is located in eastern Strawberry at an old water distribution site currently owned by Brooke Utilities. The site is located at approximately N34 ˚ 24.388 W111 ˚ 29.712 at a surface elevation of approximately 5,868ft. An existing old shallow production well at the site (55-616681) is reportedly a "dry hole".

K2 WELL SITE EVALUATION – GROUNDWATER RESOURCES POTENTIAL

Upon review of existing data and the completion of a lineament analysis of the site HWRC is confident that the location is quite adequate for the drilling of a deep test and/or production well. Figure I below, displays the results of the lineament analyses. Numerous structural features exist in the vicinity of the K2 site and at other sites to the north and northeast herein referred to as optional sites "K1" and "K3" for consistency. The existence of such structural features indicate a higher probability for the presence of secondary permeability (fractures) in the geology below. This situation would enhance the groundwater production potential within the deep regional aquifer.

FIGURE I – K2 Area Lineament Analysis



It is anticipated that the groundwater elevation of the deep regional system will be found between 4,600ft. and 4,800ft. (1,260ft. – 1,100ft. depth to water) in the vicinity. If a well is drilled in this area it is anticipated that the Redwall Fm. would be entirely to partially saturated. However, the primary producing geology may be within the Martin Fm. thru the Tapeats sandstone and into the Precambrian basement rocks at depths below approximately 1,460ft.. These strata should be saturated in this area; in this respect, drilling to a depth of approximately 2,000ft. ought to be sufficient to determine the level

of groundwater production encountered and penetrate a significant section of the deep regional aquifer. It should be noted that the deeper the well is installed the higher the groundwater elevation may rise due to the potentially semi-confined nature of the Precambrian system in this region. Also notable is that the Redwall (where productive) is producing an extremely fine red sediment and that the Tapeats and Martin may be producing sand. This situation can require more costly well construction via necessity for filter pack and well screen or surface filtration in combination with a down-hole sand separator. This issue also will add to the life cycle costs of the well and equipment. It is currently unclear if the sediment concern is a localized issue or a regional characteristic of the deep regional aquifer.

The upper 1,000ft. of strata encountered in the subject area is anticipated to consist of the Schnebly Hill and Supai formations and into the upper Naco Formation. Of consideration is the groundwater that will be encountered in this sequence as "fringe" C-Aquifer groundwater. Perched producing zones within this system occur within thin saturated sandy lime layers and fracture systems. These small systems may be interconnected w/o proper well construction resulting in vertical gradients in the well. In consequence, it is recommended that any wells installed in the Strawberry area deeper than 400ft. be constructed to utilize these aquifers discretely. HWRC believes that there is a lowermost unit of this upper system not currently utilized in the Strawberry area, as it would likely be encountered between 700ft. and 1,000ft.. The potential yield of this lower perched aquifer unit is unknown. Therefore, upon encountering this zone it is recommended that the yield of this unit be quantified and isotope and chemistry samples be collected prior to casing and grouting it off from the deep regional aquifer and perched units above. The potential exists that sufficient groundwater production could be encountered from this lower unit such that drilling need not necessarily continue. If this situation were to occur, proper well construction and provisions for the potential future deepening of the well could be made.

RELATIONSHIP TO FOSSIL SPRINGS and THE DEEP REGIONAL AQUIFER

Fossil Springs exist approximately five miles to the west-northwest of the K2 area. This fact should be considered in light of the reality of water rights and environmental concerns relating to any significant (200gpm plus) wells constructed in the deep regional aquifer in the Strawberry area. This too should be considered as part of the risk of investing public funds into such a project. HWRC currently believes that the subject K2 area may not be within that portion of the deep regional groundwater flow system supporting Fossil Springs. However, the exact location of the springs "capture" area is not clearly defined and the complexities of fractured groundwater flow occurring in the deep regional system may never be completely understood. Other than for monitoring purposes, the installation of deep regional groundwater wells much further to the west of the K2 area is not recommended. HWRC believes that sufficient data currently exists indicating that deep regional groundwater wells installed to the east, in Pine, would not produce groundwater that otherwise would have discharged at Fossil Springs. As such, deep regional groundwater wells installed in Pine are less likely to be the subject of

SUMMARY AND RECOMENDATIONS

HWRC recommends site K1 as the optimum drilling site in the K2 area. However, HWRC is confident that each of the sites in the K2 area provides adequate opportunity for deep and perched groundwater production. Additionally, opportunity for new groundwater production from a currently unutilized lower perched aquifer is a potential at each site. This affords an option in the completion of a potentially shallower well if sufficient production is encountered within or above the Naco Fm. (above approximately 1,000ft. in depth).

A caution should be taken when considering the drilling of deep regional aquifer wells in the Strawberry area as water rights and environmental concerns may arise if significant production capacity is committed. With this in mind, many opportunities currently exist in the Pine area for development of the deep regional aquifer at a significantly lower cost and risk than in Strawberry. This is due to the fact that wells in Pine need be installed to depths typically less than 1,500ft. to fully penetrate the deep regional system vs. greater than 2,000ft. in Strawberry. So too, deep wells in Pine are further from Fossil Springs and existing data clearly indicate such wells would not capture groundwater that would otherwise have discharged at the springs. The K2 area may not capture groundwater that would otherwise discharge at Fossil Springs, but this cannot currently be confirmed. Additionally, current events in the Pine area surrounding the development of the deep regional aquifer point to opportunities for partnerships with other water improvement districts and private entities that currently have wells in place and/or have tentative plans to drill.

In light of all the findings above, HWRC recommends that the K2 site be drilled once the following lower risk opportunities are explored where the water is needed:

- Conduct a hydrogeological investigation to identify at least three optimum deep regional aquifer drilling sites in the Pine area. Such an investigation should include recommendations as to the most efficient and cost saving well drilling methods as well as site specific yet practical well design criteria. Ideally, at least one of the sites may be drilled and tested in 2006.

- Explore and define the opportunities for partnerships with other local Domestic Water Improvement Districts and/or private entities which may currently be in possession of deep regional groundwater supplies or that may be considering the drilling of a deep regional groundwater well in Pine.

- Explore and define the opportunities for partnerships with Federal and/or County governments.

- Explore and define the opportunities for any combination of the partnerships above.

- Prioritize the resulting opportunities.

- Investigate the legality of any such potential arrangements and define a legal path to successful delivery of the new long-term water source to the community of Pine in the most feasible manner possible.

HWRC does not wish to diminish the opportunities presented by the K2 area as it appears to be a good location. Rather, HWRC wishes to recommend consideration of the K2 site alongside other existing opportunities. The K2 area may best serve as an augmentation supply for the Strawberry area as apposed to a new source for Pine. In this way, the costs born by Pine's water customers for the distribution of the water from great depths and over the distance from Strawberry to Pine may be avoided. In addition, such a scenario would ensure that existing resources available to the Strawberry area are preserved. Ideally groundwater from the lowermost perched aquifer may be identified at the K2 site in sufficient quantities. If this zone were slated for future reserve development in Strawberry as opposed to the deeper system in Strawberry, potential water rights and environmental questions may be averted while providing for the utilization of the K2 area at some time in the near future.

Respectfully Submitted,

Michael Ploughe P.G.

HWRC

RTH SURREBUTTAL
EXHIBIT 7

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

FILE COPY

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

June 13, 2006

Loren Peterson
Strawberry Hollow Development Co., Inc.
P.O. Box 2141
Pine, AZ 85544

Re: ***Proposed Water Purchase Agreement***

Dear Loren,

I appreciate your interest in proposing the above referenced agreement. Thank you.

As you can see by the attached document our modifications are fairly extensive but most of the foundational issues have received less attention. My interest in this agreement is that it be even handed and near equivalent to both parties. It seems to me that each of us has a benefit to be recognized by our individual organizations and water customers. I confess that I was disappointed to not see more water supply made available under this agreement.

For your consideration, I have provided a few areas of the agreement below that we find the most objectionable and respectfully request your reconsideration of these areas and numerous others.

(a) **Water Quality** – as provider of potable domestic water from your water system it seems reasonable that a purchaser of the water should expect it to meet the water quality standards required by regulation – whether customers of Pine Water Co. or Strawberry Hollow Domestic Water Improvement District receive it. Accordingly, it seems reasonable that water treatment of the water, if required, should be part of the purchase price.

(b) **Availability Charge** – in effect the proposed agreement represents little or no economic risk to Strawberry Hollow. A risk bias such as that inherently represents an arrangement that is not equitable to both parties. At the very least, it seems reasonable that if Pine Water Co. were to undertake such risk that plentiful quantities of high quality water should be guaranteed by the agreement.

(c) **Sale of Additional Water** – while it may be logical to think that Pine Water Co. always requires supplemental water supplies that it not the case during winter months. If Pine Water is compelled to buy additionally available water it is very likely, during certain times of the year, that such water would be operationally unnecessary and

would be priced at a premium in excess of the cost of other supplies. This condition would tremendously disadvantage Pine Water ratepayers.

(d) **Deposit** – it seems fair that a deposit should be held to assure payment of amounts due under the agreement. An extension of this responsibility to provide liquidated damages for a possible good faith omission of a performance obligation causing forfeiture of the deposit is onerous.

(e) **Most Favored Nation** – it seems equitable that Pine Water should purchase water from Strawberry Hollow that is no more, but no less, favorable than any other party purchasing water.

(f) **Assignment of Contractual Rights** – to assign rights of customer account collection to Strawberry Hollow, an unregulated entity, by Pine Water, a regulated entity, is likely a regulatory impossibility. In addition these conditions are unduly biased in favor of Strawberry Hollow at the expense of our ratepayers in Pine.

(g) **Indemnification** – hold harmless and indemnification sections of agreements always function best where they are as evenly balanced as possible. The proposed agreement provides for an indemnification section that is unacceptable to Pine Water.

(h) **Availability Charge Following Termination** – it seems very unreasonable that termination at will of the agreement by Pine Water should not result in the continuation of economic performance throughout the term of the agreement at sizeable expense and cost to Pine Water rate payers.

In conclusion, while we appreciate that it is your goal to minimize risk to Strawberry Hollow, as the owner and operator of a regulated utility we must consider the prudency of every decision we make. The burden the Agreement places on Pine Water's rate payers for a very modest amount of additional water supply does not appear to us to be reasonable or prudent.

Frankly, in that light, it would be our preference to start again. Towards that end, I have attached a copy of our standard Water Sharing Agreement, several of which are in now in place. In the last rate case, the Commission was made aware of these agreements and did not question their validity or reasonableness. Moreover, we have always kept and intend to keep our promise to your neighbors not to advantage, or disadvantage, one water sharing "partner" from another. All our water sharing "partners" terms and conditions are materially the same. We hope you will agree it is in the public interest to proceed along these lines and I would invite you to review the attached Water Sharing Agreement and provide your comments and suggestions.

I anxiously await your further comments.

Sincerely,

FILE COPY

Robert T. Hardcastle
President

Cc: MJ
Jay Shapiro, Esq.

RTH SURREBUTTAL
EXHIBIT 8

Bob Hardcastle

From: Loren Peterson [lorenpeterson@npgcable.com]
Sent: Wednesday, January 03, 2007 7:40 PM
To: Bob Hardcastle
Subject: RE: SHDWID Interconnection

Bob,

We Have NO **agreement for an interconnection**. It is not in the best interests of SH3 LLC to participate at this time in such an interconnection. If a reasonable agreement can be reached regarding the same, then SH3 LLC will reconsider its position in this matter. **If you recall we have met and discussed it and I sent you an agreement that you would not agree to. We met again and decided we could not come to an agreement.**

The "Status" is we have **not reached an agreement** and **you seem disinterested in selling the water companies**. It appears we have **reached another impasse**. After the responses from your attorney, I question if you are interested in selling the water companies.

DO NOT ATTEMPT TO CONNECT TO THE STRAWBERRY HOLLOW SYSTEM!

Loren Peterson
201 N Trailwood Rd
Payson, AZ 85541
Home/Office: 928-472-4477
Fax: 928-472-7768
Mobile: 928-978-7001
e-mail: lorenpeterson@npgcable.com

-----Original Message-----
From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Tuesday, January 02, 2007 11:18 AM
To: Loren Peterson
Cc: Myndi Brogdon
Subject: SHDWID Interconnection

Loren-

Hope you had a good holiday season.

On two previous occasions I have inquired into the status of the proposed water system interconnection between PWCo. and SHDWID. On December 11, I sent you a facilities sketch and pertinent site photographs from December 5. I have directed our operations people to acquire the necessary materials and be prepared to complete this installation.

I would appreciate you updating me on the status of this matter and when we can schedule the interconnection of the water systems.

Please advise.

Robert T. Hardcastle
President
Brooke Utilities, Inc.
P.O. Box 82215
Bakersfield, CA 93380-2215
Office: (661) 633-7526
Fax: (781) 823-3070
RTH@brookeutilities.com

1/4/2007

FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
Todd C. Wiley (No. 015358)
Patrick J. Black (No. 017141)
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone (602)916-5000
Attorneys for Pine Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B. PUGEL AS TRUSTEES OF THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL AND SALLY RANDALL Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-06-0407
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)

SURREBUTTAL TESTIMONY
OF
STEPHEN D. NOEL, R.G.

I. INTRODUCTION AND PURPOSE.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. Stephen D. Noel, Southwest Ground-water Consultants, Inc., 3033 No. 44th St., Suite 120, Phoenix, Arizona 85018. My telephone number is (602) 955-5547.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am the President/Principal Hydrogeologist of Southwest Ground-water Consultants, Inc.

Q. HAVE YOU PREVIOUSLY SUBMITTED DIRECT TESTIMONY IN THE INSTANT CASE?

A. Yes.

Q. HAVE YOU REVIEWED MR. PLOUGHE'S REJOINDER TESTIMONY AND MR. PUGEL'S REBUTTAL TESTIMONY?

A. Yes, I have reviewed both of these testimonies.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. To respond to certain testimony by Mr. Ploughe and Mr. Pugel.

II. RESPONSE TO MR. PLOUGHE'S REJOINDER.

Q. MR. PLOUGHE CLAIMS THAT YOU DID NOT CONDUCT A REVIEW OF SEVERAL DOCUMENTS. WERE YOU PROVIDED THESE DOCUMENTS TO REVIEW?

A. I had reviewed the Hydrogeological Study by Highland Water Resources dated September 28, 2005, before my direct testimony was prepared. After my direct testimony was filed on Monday, April 16, 2007, I reviewed the remaining documents Mr. Ploughe identifies at page 2 of his rejoinder testimony. I understand that these documents were not produced by Complainants until Friday, April 13, 2007.

Q. BUT DOESN'T MR. PLOUGHE TESTIFY THAT THESE ARE PUBLIC RECORDS?

A. Yes, he does, but I was not asked by PWCo to do a search of all public records in an effort to locate documents that might support the Complainants' claims about the availability of water sources. Nor were all of these documents provided in response to discovery requests that I helped the Company prepare well before my direct testimony was to be filed.

Q. MR. PLOUGHE TESTIFIES (AT PAGE 2 OF HIS REJOINDER) THAT REVIEW OF THESE DOCUMENTS COULD CHANGE YOUR CONCLUSIONS REGARDING THE SH3 WELL? IS THAT THE CASE?

A. Not the bottom line, but they did help in the general understanding of the hydrogeology.

Q. DO THESE DOCUMENTS IMPACT ANY OTHER ASPECTS OF YOUR PRIOR TESTIMONY?

A. To an extent. There is a discussion of the groundwater flux presented in the Town of Payson 2005 Status Report Mr. Ploughe referred to and which I have now reviewed. In the 2005 Report for Payson, Mr. Ploughe concluded that (1) the estimated safe yield of the deep aquifer underlying the Pine-Strawberry area was 900 ac-ft/yr; and (2) together with the shallow aquifer system, the total safe yield of the Pine–Strawberry area is approximately 1,200 ac-ft/yr. These values are reasonable to me and set the overall area-wide pumping limit for the entire aquifer system below Pine and Strawberry, Arizona.

Q. DOES MR. PLOUGHE'S REJOINDER TESTIMONY CONFIRM THE CONCLUSIONS REACHED IN THE 2005 REPORT FOR PAYSON?

A. Not entirely. Mr. Ploughe estimated a deep aquifer flux of 3,360 ac-ft/yr in his rejoinder testimony (at page 4), but he reported a 900 ac-ft/yr deep aquifer flux in

his 2005 Town of Payson Status Report. In his testimony he also used 1,200 ac-ft/yr as a conservative (referencing the 2005 Status Report and the deep + shallow aquifer system) value for the groundwater flux. I don't know where Mr. Ploughe came up with the 2,046 ac-ft/yr of groundwater withdrawal number in his rejoinder testimony. *See* Ploughe RJ at 3-4.

Q. WHAT ARE YOUR CONCLUSIONS?

A. I disagree with Mr. Ploughe's value for transmissivity. My analysis results in a lower transmissivity value which results in a lower groundwater flux calculation. Thus, I believe that both the 3,360 ac-ft/yr and the 2,046 ac-ft/yr values are high. There is very little historical data at this point in time. In my view, the natural flow of groundwater would support development in the 1,125 ac-ft/yr range from the deep aquifer system, and therefore I would be more comfortable in the 1,125 ac-ft/yr range at this time. As Mr. Ploughe testifies, groundwater flux determinations are important and more deep wells have to be drilled and operated to refine estimates. *See* Ploughe RJ at 5.

Q. WHAT DOES ALL THIS MEAN FOR TOTAL WATER PRODUCTION IN THE PINE-STRAWBERRY REGION?

A. It means that the production from the deep aquifer from an individual well or wells cannot exceed the regional groundwater flux value of 1,125 ac-ft/yr. However, the particular yield of an individual well is site specific, and is very dependent on the number of fractures encountered. The fact that an aquifer has sufficient overall capacity does not support a conclusion that an individual well can produce at any particular rate of production for a sustained period of time.

Q. HOW DID MR. PLOUGHE RESPOND TO YOUR CONCERNS OVER THE LACK OF INFORMATION TO DETERMINE SUSTAINABILITY?

A. Mr. Ploughe notes that groundwater is passing through the aquifer in rates

exceeding the current and near-future demands of the area based on the groundwater flux analysis. *See* Ploughe RJ at 4-5. The question that remains is how efficiently can the groundwater flux be captured via wells.

Q BASED ON THE AVAILABLE INFORMATION, WHAT CAN YOU CONCLUDE WITH RESPECT TO THE MILK RANCH WELL?

A. The combination of the groundwater flux, the tested capacity of the well, and the relatively low water demand results in a conclusion that the well would be able to meet a projected demand of 26.4 gpm, the projected demand found in Mr. Ploughe's rejoinder. Ploughe RJ at 3. However, Mr. Ploughe's initial claims of 300 gpm are unsupported by the test data that we have been provided. Although I do agree that the well has the potential for higher production if it is cleaned and fully developed. At this time, we do not know by how much the well's production will exceed the projected demand. *Id.*

Q. SO THE MILK RANCH WELL IS NOT "FULLY DEVELOPED"?

A. Not according to Mr. Ploughe's testimony. *Id.*

Q. WHAT WOULD IT TAKE FOR THE WELL TO BE FULLY DEVELOPED?

A. To fully develop the well in the context of maximizing production, the well needs to be pumped at higher rates and the sand in the formation needs to be pumped out. This would be similar to what they did initially, but more needs to be done. However, it is possible that sand will always be pumped at higher rates, so the well would be equipped with a sand separator and would pump at lower rates.

Q. WERE YOU PROVIDED SUFFICIENT INFORMATION TO DETERMINE A PROJECTED DEMAND OF 26.4 GPM FOR THE CUSTOMERS TO BE SERVED BY THE MILK RANCH WELL?

A. No, I am relying on the number provided by Mr. Ploughe. If this projected demand

is accurate, I believe the projected demand can be served by the Milk Ranch Well because this demand would be roughly equivalent to one-half of the projected long-term pumping rate of the well. Basically, that would allow the well to operate 12 hours per day resulting in a period of recovery that should help maintain the yield of the well.

Q. IS IT REASONABLE TO ASSUME THAT A PRODUCTION WELL WILL NOT PUMP 24/7.

A. Production wells typically do not pump 24 hours per day. Half time pumping is probably a better average, with more hours pumping per day during the peak demand months and less hours per day pumping during the off peak months. However, if there is only one well, and if the well is not interconnected to a larger distribution system, and if it is only pumped 12 hours per day, a storage tank would be necessary for this well to be used to serve customers since demand takes place 24 hours a day.

Q. HAS ADWR DETERMINED THAT THE SH3 WELL HAS EXCESS WATER ABOVE THE AMOUNT NEEDED TO SERVE THE 72 LOT STRAWBERRY HOLLOW SUBDIVISION?

A. Not from what I can tell from the ADWR Adequacy letter and background information. Water adequacy is for a particular number of lots, not for a particular a volume of water.

Q. MR. PLOUGHE TESTIFIES THAT YOU FAILED TO TESTIFY THAT PWCO IS ABLE TO SERVE THE PARCELS OF PROPERTY THAT ARE THE SUBJECT OF THIS PROCEEDING AT REASONABLE RATES. WHY DIDN'T YOU OFFER SUCH TESTIMONY?

A. Because I was not asked the question, nor do I have any basis to testify concerning reasonable rates. All I can really say is that there are other criteria that add to the

overall cost of the water beyond the fact that the water can be pumped from the well(s).

Q. DOES MR. PLOUGHE'S TESTIMONY OR ANALYSES SUPPORT THE ELIMINATION OF CONSERVATION MEASURES FOR PROPERTIES LOCATED IN OR AROUND PINE, ARIZONA?

A. No. We are still in a period of extended drought. Conservation should always be an integral part of water service in and around Pine, Arizona, just like it has remained a significant part of Payson's water use management. This is especially true in light of the fact that the per capita water use in Pine is low. If water conservation was not stressed, the per capita demands would probably increase.

III. RESPONSE TO MR. PUGEL'S REBUTTAL TESTIMONY.

Q. IN HIS REBUTTAL TESTIMONY(AT PAGE 6), MR. PUGEL CRITICIZES YOU FOR FAILING TO CONSIDER THE SEASONAL NATURE OF RESIDENTS IN PINE, ARIZONA. HOW DO YOU RESPOND?

A. The seasonal nature of residents is important and part of the conservative nature of the water demand estimate. However, the water provider must be able to provide water assuming year-round residency. The water provider can't say, no water this month, you have over extended your stay.

Q. MR. PUGEL ALSO CLAIMS ON THE SAME PAGE OF HIS REBUTTAL TESTIMONY THAT YOU ARE ATTEMPTING TO "PROPAGANDIZE THE READER" BY MAKING A "BIASED MISSTATEMENT" ABOUT SEWAGE DISPOSAL. HOW DO YOU RESPOND?

A. I don't understand his comment "propagandize the reader" by making a "biased misstatement" about sewage disposal. I would think the reader would want to know where indoor water goes after it is used and the condition of that water. Is it drinkable? The real misleading statement is "that their planned developments

promote the sustained use of water because once used the water is returned to the ground", which is the statement I was responding to in my direct testimony. *See* Complainants' Response to Company's Data Request 5.6, copy attached hereto as Noel Surrebuttal **Exhibit 1**. This statement suggests that once the water has returned to the ground, it can be directly re-used. I disagree.

Q. WHY DO YOU DISAGREE WITH THIS STATEMENT?

A. In-house water will eventually reach the septic system and as designed will leak out into the soils and eventually into the upper aquifer, as I testified in my direct testimony. Noel DT at 9-10. How this testimony is a "biased misstatement" is beyond me. Pugel RB at 6. The problem is this wastewater from a septic tank will not be drinkable and may contaminate the upper aquifer. Typical septic system contaminants are nitrates, which lead to poor water quality. This is a problem in other areas of the state where septic systems are used.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

1910717.2/75206.010

NOEL SURREBUTTAL
EXHIBIT 1

DATA REQUESTS RESPONSES

FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.

Docket Nos. W-03512A-06-0407; W-03512A-06-0613; W-03512A-07-0100 (consolidated)

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

ANSWER: The use of water within the Pine Community can contribute to a sustained water supply because the source of water is groundwater, and once used it is returned to the ground. This returned water, when augmented by natural recharge, allows for the continued use of the water within the community. The Complainants development will not export water out of the community.