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AZ CORP COMMISSION  
DOCKET CONTROL

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 **RAYMOND R. PUGEL AND JULIE B.**  
10 **PUGEL, husband and wife as trustees of THE**  
11 **RAYMOND R. PUGEL and JULIE B. PUGEL**  
12 **FAMILY TRUST,**  
13 **and**  
14 **ROBERT RANDALL and SALLY RANDALL,**  
15 **husband and wife**  
16 **Complainants,**  
17 **v.**  
18 **PINE WATER COMPANY, an Arizona**  
19 **Corporation**  
20 **Respondent.**

**DOCKET NO. W-03512A-06-0407**  
**REPLY TO RESPONSE TO MOTION IN**  
**LIMINE**

21 **ASSET TRUST MANAGEMENT, CORP.**  
22 **Complainants,**  
23 **v.**  
24 **PINE WATER COMPANY, an Arizona**  
25 **Corporation**  
26 **Respondent.**

**DOCKET NO. W-03512A-06 -0613**

27 **JAMES HILL and SIOUX HILL, husband and**  
28 **wife and as trustees of THE HILL FAMILY**  
29 **TRUST,**  
**Complainants,**  
**v.**  
**PINE WATER COMPANY, an Arizona**  
**Corporation**  
**Respondent.**

**DOCKET NO. W-03512A-07-0100**

Arizona Corporation Commission  
**DOCKETED**

**JUN 22 2007**

DOCKETED BY

1 **BRENT WEEKES,**  
2 **Complainants,**  
3 **v.**  
4 **PINE WATER COMPANY, an Arizona**  
5 **Corporation**  
6 **Respondent.**

**DOCKET NO. W-03512A-07-0019**

7 COMES NOW RAYMOND R. PUGEL AND JULIE B. PUGEL, husband and wife as trustees of THE  
8 RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and  
9 SALLY RANDALL, husband and wife, ASSET TRUST MANAGEMENT, CORP. and BRENT  
10 WEEKES, by and through their attorney undersigned and respectfully move the hearing officer to grant  
11 the Motion in Limine precluding the introduction of evidence or issues beyond the scope of what should  
12 lawfully be considered at the hearing on the Complainants' Application for the Deletion of Territory  
13 from the Certificate of Convenience and Necessity {CC&N} of Pine Water Company.

14 The Complainants and Pine Water Company each have a different perspective as to the scope of  
15 the hearing to be held by the Arizona Corporation Commission pertaining to the application for deletion  
16 of territory from the CC&N of Pine Water Company. Pine Water Company, in an effort to preserve the  
17 integrity of its CC&N, even though it is abundantly clear that it has problems providing adequate water  
18 service to the residents and property owners within the Certificated Area,<sup>1</sup> seeks to introduce irrelevant  
19 and immaterial evidence pertaining to issues beyond the scope of this hearing. The Complainants all  
20 seek to have their property removed from the CC&N so that they can explore alternatives and provide  
21 themselves water service since Pine Water Company will not and cannot provide them adequate service.

22 The Complainant's in their initial Motion point out the limitations set forth by the Supreme  
23 Court of Arizona in the *James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz.*  
24 *426, 671 P.2d 404 (S.Ct. 1983)* case. The position of the Complainants is that the hearing is limited to  
25 the determination of the issues of:

26  
27  
28 <sup>1</sup> The Administrative Hearing Officer's attention is directed to a letter from Kris Mayes, a member of the Arizona Corporation  
29 Commission to Robert Hardcastle, Pine Water Company, dated June 12, 2007, published in the *Payson Roundup* on June 15,  
2007, page 9A, wherein Commissioner Mayes outlined the current dismal state of affairs and requested certain assurances  
from Pine Water Company to prevent the problems of water outages and diminished service in the Pine area.

1 1. Can Pine Water Company provide adequate water service to the Complainants?

2 2. Can Pine Water Company provide this water service at reasonable rates?

3 As noted by our Supreme Court, Pine Water should be allowed the opportunity to provide the adequate  
4 service at reasonable rates before a portion of its certificate is deleted. Clearly evidence to that end  
5 should be a part of this proceeding, but the Supreme Court also noted that an application for deletion of  
6 territory is not the same as an application for the initial grant of a Certificate of Convenience and  
7 Necessity. In the case of an initial application the public interest is determined by:

8  
9 comparing the capabilities and qualifications of competitors vying for the  
10 exclusive right to provide the relevant service. The amounts of time and  
11 money competitors must spend (at the consumers' ultimate expense) to  
12 provide service become primary determinants of the public interest. *Id at*  
13 **430**

14 But in the case of a deletion of territory the view of the public interest is different in that:

15  
16 Where a public service corporation holds a certificate for a given area, the  
17 public interest requires that that corporation be allowed to retain its  
18 certificate until it is unable or unwilling to provide needed service at a  
19 reasonable rate. *Id at 430.*

20 So it is abundantly clear that those are the questions which are the subject matter of this hearing, not the  
21 issues of the capabilities and qualifications of competitors, or the time and money which must be spent,  
22 or even whether or not the complainants have a means of providing water service for themselves.  
23 Attempts to raise such issues merely are an attempt to focus the purpose of this hearing away from the  
24 principal questions which must be resolved which will not be resolved in favor of Pine Water Company,  
25 onto issues where the waters can be muddied and Pine Water Company can hope, like their prayer for  
26 rain, that something will happen which will extricate them from this untenable situation in which they  
27 find themselves.

28 Looking at the arguments posited by Pine Water Company clearly demonstrates this tactic on  
29 their part. They argue:

- *Complainants have not identified specific evidence to be excluded and have asked for a broad sweeping exclusion.*

30 The first question is whether or not this is the time to isolate specific evidence. The hearing has not  
31 begun and specific evidence has not been offered. Until such time as the evidence per se is offered, it is

1 not possible to make specific objection. The general statement by Pine Water Company on its face may  
2 look good, but it lacks merit.

- 3 • *Complainants have not provided specific objections to specific evidence.*

4 The principal objection is that of relevancy. Matters which the Pine Water Company is threatening to  
5 make a part of this hearing have been set forth and those to which this motion is directed are those which  
6 are not relevant to the issues which the Arizona Supreme Court has directed the Commission may  
7 review in considering an application for deletion of territory.

- 8 • *PWCo's due process rights would be violated if PWCo cannot defend against all charges set forth in the complaint.*

9 There is no argument that Pine Water Company should be allowed to defend against he charges that it  
10 cannot provide the complainants reasonable service at a reasonable price. The Motion in Limine is  
11 directed to the extraneous matters which the Pine Water Company appears to be interested in presenting  
12 to this hearing.

- 13 • *Complainants have refused to pursue main extension agreements and to advance the water supply infrastructure and the water supply facilities*

14 This would be a legitimate matter for the hearing officer to consider in light of the legal requirement that  
15 Pine Water Company has to be afforded the right to provide service before its CC&N can be terminated.

- 16 • *Complainants actions seek to carve up the CC&N.*

17 Number one, this is merely argumentative, not really directed at the issue of the relevancy of evidence.  
18 Second, if Pine Water Company cannot provide adequate service at reasonable rates, then it is incumbent  
19 upon the Commission to carve up Pine Water Company's CC&N.

- 20 • *Complainants seek to avoid regulatory oversight of the ACC by deleting their lands from the CC&N*

21 How is this relevant to the questions which the Commission is allowed to address in this instance?  
22 While this may be a matter of statewide policy, the law is certainly established concerning which water  
23 purveyors can be regulated by the Commission and which are not. This argument is meaningless.

- 24 • *Allowing the Complainants to be deleted allows them to draw down the aquifer without any regulation by the ACC making it impossible to manage the limited resources in the Pine Area.*

25 This argument of Pine Water Company is well beyond the scope of this hearing. Additionally, it appears  
26 to involve subject matter outside the jurisdiction of the Commission such as matters pertaining to the  
27 drawdown of groundwater. So this argument should be totally disregarded.  
28

29

- 1 • *Complainants have previously asserted that the scope of discovery is broad and inclusive and*  
2 *are barred from changing their mind.*

3 Another argument which has no merit. The Complainants may have made such assertions in the  
4 negotiations concerning the scope of discovery, but they have not made such assertions in any formal  
5 pleadings before the Commission. Thus they are not barred from taking a contrary position.

- 6 • *Complainant's are requesting that the ACC not determine:*
- 7 *a. whether the Milk Ranch well is an adequate and assured water source*
  - 8 *b. how future customers will be provided with service*
  - 9 *c. how the remaining customers of PWCo may be impacted by the requested deletion and*  
10 *groundwater pumping in the deleted territory*
  - 11 *d. whether it is good public policy to allow a private developer that refuses to follow AAC R14-*  
12 *2-406 to carve up a CC&N for commercial gain.*

13 It is beyond the Commissions jurisdiction to determine the adequacy and assured water source issues  
14 pertaining to the Milk Ranch Well. It is not necessary in the determination as to whether or not Pine  
15 Water Company can provide adequate service at a reasonable rate that the Commission make a  
16 determination as to how future customers on the Complainants' property will be provided water service.  
17 It is not within the jurisdiction of the Commission to determine the impact of water pumping on the  
18 property proposed to be deleted on other water resources and clearly it would be of benefit to the other  
19 customers of Pine Water Company to delete territory seeking water service so that the already limited  
20 resources of Pine Water Company can better serve the existing customers of Pine Water Company.

21 As for the public policy issue, that is clearly not within the scope of this hearing. While it may  
22 be a matter of general statewide importance, it cannot be determined within this limited context.  
23 Second, the characterization of the Complainants is poor. The issue of the following the rule, especially  
24 as it relates to property such as the Complainant ATM which has no water resource, becomes  
25 meaningless. As for the others, while the rule may have historically worked, its application in this  
26 instance would clearly violate the State Constitution prohibitions of taking private property for public  
27 use without paying compensation since it does constitute a taking of the right to extract and use  
28 groundwater and makes no provision of the payment therefore.

29 Last, what is the problem with the Complainant's making a profit? Pine Water Company hopes  
to make a profit each and every year. If one looks at the history of jurisprudence in this country, the  
right to own and control property and make a profit therefrom is as inviolate as the personal rights which