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**TURLEY SWAN CHILDERS
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PHOENIX, ARIZONA 85012

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2007 AUG -7 A 10: 34

AZ CORP COMMISSION
DOCKET CONTROL

David W. Davis (#015022)
Attorneys for Complainant Hill

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.

ASSET TRUST MANAGEMENT, CORP.,

Complainant,

v.

PINE WATER COMPANY,

Respondent.

JAMES HILL and SIOUX HILL, husband
and wife and as trustees of THE HILL)
FAMILY TRUST,)

Complainant,

vs.

PINE WATER COMPANY, an Arizona)
Corporation,)

Respondent.

BRENT WEEKS,

Complainant,

vs.

PINE WATER COMPANY,

Respondent.

DOCKET NO: W-03512A-06-0407

Arizona Corporation Commission
DOCKETED

AUG 07 2007

DOCKETED BY

DOCKET NO: W-03512A-06-0613

~~DOCKET NO W-03512A-07-0100~~
W-03512A-07-0106

DOCKET NO W-03512A-07-0019
(Consolidated)

**HILL'S LIST OF EXHIBITS THAT
MAY BE USED AT HEARING**

Complainant Hill, by and through undersigned counsel, hereby submits the following exhibits which may be used at trial.

1 Hill's direct testimony. Our records indicate that this was disclosed to opposing
2 counsel and copies were delivered to the docket control on March 16, 2007. However, it appears that the
3 current docket does not contain the testimony.

4 2. Hill's response to Pine Water Company's first set of data requests.

5 3. Map of Hill's property (H5, produced in response to the data request).

6 4. Hill's well documentation (H14-17; H41-45, produced in response to request for
7 production).

8 5. Correspondence among Hill, Hardcastle, and their attorneys (H46-60, H63-75,
9 Letters from Hill to Brookes, 7/21/05, 8/24/05. Letter from Brookes to Hill 8/31/05)

10 6. Pine Water Company's second set of data requests to Hill and Hill's response.

11 DATED this 2nd day of August, 2007.

12
13
14 TURLEY SWAN CHILDERS
RIGHI & TORRENS, P.C.

15
16 By David W. Davis
17 David W. Davis
3101 N. Central, Suite 1300
18 Phoenix, AZ 85012
Attorneys for Complainant Hill

19 **ORIGINAL** and 17 copies of the foregoing filed
this 2nd day of August, 2007, to:

20 Docket Control Center
21 Arizona Corporation Commission
1200 W. Washington Street
22 Phoenix, Arizona 85007

23 **COPIES** of the foregoing hand-delivered this
2 day of August, 2007, to:

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

27 ...

28 ...

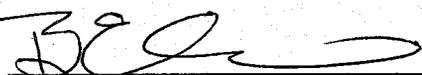
Kevin Torrey
Legal Division
1 Arizona Corporation Commission
1200 W. Washington Street
2 Phoenix, Arizona 85007

3 Ernest Johnson, Director
Utilities Division
4 Arizona Corporation Commission
1200 W. Washington Street
5 Phoenix, Arizona 85007

6 **COPIES** of the foregoing mailed
and emailed this
7 2nd day of August, 2007, to:

8 Jay L. Shapiro
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Attorneys for Complainants

BEFORE THE ARIZONA CORPORATION COMMISSION

JAMES HILL and SUSAN HILL, husband)
and wife and as trustees of THE JAMES)
ELVAN & SUSAN MARIE TRUSTEE HILL)
FAMILY TRUST,)
Complainants,)
vs.)
PINE WATER COMPANY, an Arizona)
Corporation,)
Respondent.)

DOCKET NO. W-03512A-07-0100
DIRECT TESTIMONY OF JAMES HILL

Complainants, hereby submit direct testimony of James Hill, attached hereto as exhibit 1.

DATED this 16 day of March, 2007.

TURLEY, SWAN & CHILDERS, P.C.

By David W. Davis
David W. Davis
3101 N. Central, Suite 1300
Phoenix, AZ 85012
Attorneys for Complainants

ORIGINAL and 15 copies
of the foregoing delivered this
16 day of March, 2007, to:

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing filed this
16 day of March, 2007, to:

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11 Docket No. W-035012A-06-047
12 Docket No. W-03512A-06-0613

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1 Direct testimony of James Hill W-20511A-07-0100

2 1. Q: Describe the land you own in Gila County?

3
4 **(1). This is A three acre parcel** in the far southwest corner of section 31
5 township 12 north, range 9E. It is a triangle of land immediately south of
6 Highway 87 and north of Bradshaw. It is zoned residential and has been
7 subdivided into five small lots. I understand that it is within Pine Water
8 Company district CC&N.

9 (HILL JAMES ELVAN & SUSAN MARIE TRUSTEE , HILL FAMILY TRUST) (PT
10 GOV LOT 4 IN W2 SW SW SEC 31 T12N R9E; SWLY OF HWY RIGHT OF
11 WAY 87; APPROX 2.64 AC M/L

12 **(2). This is a 20 acre commercial lot** across the highway from #1 above. It is
13 northeast of Highway 87. Pine Haven goes through the parcel.

14 (HILL JAMES ELVAN & SUSAN MARIE TRUSTEE , HILL FAMILY TRUST)
15 (PARCEL TWO ROS 2914 SEC31 T12N R09E;=20.38 AC (OUT OF 301-66-
16 116Q)

17 **(3). This is a 12 acre parcel** about 700 feet east of the 20 acre parcel in
18 #2 above. I understand, from dealings with Pine Water Company and
19 the Arizona Corporation Commission that this parcel is not within Pine
20 Water Company's CC&N and is not within any other water district.

21 (HILL JAMES E & SUSAN M TRUSTEES, HILL FAMILY TRUST) (PARCEL D
22 OF RECORD OF SURVEY 1291 IN SECTION 31 T12N R9E; = 11.96 ACRES
23 M/L (COMBINED PARCELS 301-66-116 C, D, J, M, N & P).

24 **(4). A very small parcel of land** on the NW corner of Hwy 87 and Aztec in
25 north Pine. Upon that parcel of land is a well I own: 55-526079.

26 (POR SEC 26 T12N R8E; COMM AT E 1/4 SEC 26; TH S89D45'13 W
27 310.53' TO POB; TH S0D03'52 E 49.94'; TH S89D30'32 W 88.56'; TH
28 N13D50' 27 W 50.33'; TH N15D18'29 W 32.53'; TH N73D35'49 E
113.69'; TH S0D03'52 E 61.65' TO POB; = 0.07 AC M/L (301-69-195)
(OUT OF 301-02-014M).)

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2. Q: What are your plans for these properties?

A: My desire is to obtain a water supply for #1 above (3 acre residential) and develop it as residential lots.

My desire for #2 (commercial 20 acres) is to obtain a water supply, or use my existing water supply by trucking water to develop the land. The development would likely include some type of subdivision of the land.

3. Q: Have you made attempts to obtain water from Pine Water Company regarding #3?

A: My initial attempt to obtain water from Pine Water Company regarding #3 (my residence) above was in 2002 or 2003. I was placed on the waiting list which I understood to have a few hundred names. After a few years, I was informed by Pine Water Company by telephone that I was at the top of the waiting list. However, they then learned, for the first time, that I was not within their water district and they therefore could not supply water to me at that address.

4. Q: Have you made attempts to obtain water from Pine Water Company for parcel 2 and parcel 1?

A: I wrote a letter to Pine Water Company in 2005 requesting water meters for parcels 1 and 2. I also made several phone calls. After a long period of no response, Pine Water finally responded (only after additional phone calls) by letter indicating that they were under a moratorium for main extensions. That precluded us from having water from Pine Water Company provided to either of those properties.

****end****

Amended Answer to
FIRST SET OF DATA REQUESTS
FROM PINE WATER COMPANY
TO JAMES HILL AND SUSAN HILL
W-20511A-07-0100 and W-03512A-07-0100

- 1.1 Please identify all plans for development, whether residential, commercial or otherwise for each of the parcels of real property identified in Mr. Hill's direct testimony.

Residential three acres: Hill plans to sell this as residential property for one to five homes.. H 1-2.

Commercial property 20 acres: Hill plans to subdivide this into smaller lots. He would then use it or sell it for commercial purposes or re-zone it for residential purposes. H3-4.

- 1.2 Please provide copies of any reports, studies or other analyses concerning the availability and use of groundwater, surface water or purchased water in connection with the development plans identified in response to data request 1.1.

Hill's well documentation. H6-45.

We are not aware of any "surface water or purchase water" reports.

- 1.3 Please identify all water sources that could or will be used in connection with the development plans identified in response to data request 1.1. Water sources includes any wells located within or in the immediate vicinity of Complainants' properties, any surface water rights, any contracts for the purchase of water from any other person or water provider.

Hill may drill a well on the property.

Hill may haul water from his well.

There are no wells located within or in the true immediate vicinity (1/4 mile) of Complainants' properties. Hill's well is 2.2 miles from the property. There are perhaps 50 or more private wells within 2 miles of Hills property. The closest (that we know of) is owned by Travis Stodghill, Old County road. There are no contracts for purchase of water with any of those well owners.

- 1.4 For each well identified in response to data request 1.3, please provide the well registration number, the owner of record, copies of all filings in the last three years with ADWR regarding such well and copies of all drilling, pump and other well tests.

See #1.2 above. We have no reports on the 50 (or so) other wells.

- 1.5 For each other water source identified in response to data request 1.3, please provide copies of contracts, decrees and/or any other documents evidencing the availability of such water source for use in connection with the development plans identified in response to data request 1.1.

We are not aware of any contracts or documents other than 1.2 above.

- 1.6 Please provide a map or maps showing the location of Complainants' properties in relation to Company's CC&N.

See documents H5.

- 1.7 Please identify and provide copies of any and all approvals for development received by Complainants for the development of the properties discussed in Mr. Hill's direct testimony. Such approvals would include, but not be limited to, any approvals issued by ADWR, ADEQ or Gila County.

Hill has not sought approval for development of the properties from ADWR, ADEQ, or Gila county.

- 1.8 Please explain Complainants' reasons for refusing to accept the Company's October, 2006 will-serve letter?

The will serve letter sent by Jay Shapiro offered the following:

The first step is to conduct an engineering and hydrological analysis to determine the means by which water utility service will be extended to the property. However, further analysis must consider projected average and peak water capacity requirements resulting from development of the property.

PWC commands us to conduct engineering and hydrological analysis. Unfortunately, PWC also requires that such hydrological analysis include the "projected average and peak water capacity requirements resulting from development of the property. Basically, PWC is asking us to do the impossible. They want us to project the peak water capacity requirements of property which has not been developed.

For example, one of Hill's proposed developments is to provide water to residential land and then sell the land to someone who will likely build a home and perhaps bring a family to Pine and live in this beautiful community. Unfortunately, that family has not yet moved to Pine. They have not yet bought Hill's property. They are not likely to make an offer until Hill has water. Therefore, we do not know whether that family will have two children, three children, eight children or no children. We do not know whether that family will move to Pine on a permanent basis or simply use the property for weekends. Consequently, we are unable to use a crystal ball and project the average or peak water capacity requirements resulting from development of the property.

Therefore, one of the reasons we refused to accept the company's October 2006 will-serve offer/letter is because it states, "Further analysis must consider projected average and peak water capacity requirements resulting from development of the property."

The same crystal ball problem applies to the commercial property. Shapiro's letter demands that, "PWC's consultants will need to be provided with reasonably detailed information about the property and all plans to develop in order to perform the necessary engineering and hydrological analysis."

Hill does not know yet who will buy the commercial property. It could be an antique shop which uses almost no water. It could be a restaurant which uses a moderate amount of water. Hill will not know until someone makes an offer on the property and he sells it. No one will make an offer on the property unless they know it has water.

In essence, Shapiro has drafted a chicken/egg requirement which will make it impossible to get water to the property. Hill cannot project average and peak water capacity until the ultimate users buy the property [the egg]. PWC also knows that those same people will never buy until there is water to the property [the chicken]. PWC wants us to somehow produce an egg from a farm that outlaws chickens.

The second reason we did not accept the company's October 2006 offer was the requirement by Shapiro that "PWC will require a deposit in the amount of \$10,000." The alleged purpose of the deposit was to "allow PWC to begin incurring the administrative expenses such as third party costs of engineering and inspection, hydrology, accounting and legal services."

As we see it, essentially PWC is asking us to:

- 1) give PWC a well which is capable of delivering 500,000 up to 1,000,000 gallons a month to Pine Water Company,
- 2) while at the same time Hill's property might only use 100,000 gallons per month,
- 3) Hill, or his buyers, then pay PWC \$8.00 per 1,000 gallons for Hill's use of Hill's well water,
- 4) the excess water from Hill's well is then sold by PWC to others at \$8 per 1000 gallons,
- 5) finally, Hill's reward for supplying additional water to PWC, is to pay all engineering costs, all connection costs, and atleast \$10,000 of PWC's accounting and legal services.

In essence, PWC would have their administrative cost paid by Hill, they would receive more water from Hill than Hill was taking from their system, and Hill would pay for the connection cost on both ends of the system – the connection to his property and the connection from his well to PWC's pipes. PWC would receive a financial benefit with absolutely no cost.

PWC is confused. This is an offer PWC should make to a developer who wants to extend the main, but brings no additional water to the system.

If the new user brings 10 gallons into the system and uses 9 gallons (assume 10% waste) then there are no grounds to demand a hydrological analysis which includes the "projected average and peak water capacity requirements resulting from development of the property. If Hill provides 10% more water than he uses, it simply does not matter whether or not he can adequately predict his future water use. All that matters is whether or not he supplies more water than he uses.

- 1.9 Is it Complainants' position that any water utility facilities required for Company to extend water utility service to Complainants' properties should be designed, constructed and financed by Company? Please explain the bases for the response.

No. If the complainant was simply supplying PWC with only a sufficient amount of water to cover the added users on the complainant's property then perhaps the complainant should be required to pay most or all of the cost to extend the water utility service.

If, however, the complainant supplies five gallons of water to PWC for every one gallon the complainant uses then PWC significantly benefits from the extension and should pay for the cost of such extension. PWC benefits by reducing its costs of hauling water. PWC benefits by selling the additional water to its customers at \$8.00 per 1,000 gallons, when it is in fact purchased for far less than that.

- 1.10 Is it Complainants' position that they should not be required to enter into main extension agreements with the Company pursuant to AAC R14-2-406? Please explain the bases for the response.

Correct. Hill should not be "required to enter into a main extension agreement" with PWC for two reasons. First, R14-2-406 does not apply when PWC does not have the water to extend the main. Second, extension of the main would not be economically beneficial for either party.

The regulation R14-2-406 actually does not apply to our situation. The main extension agreement set forth in that regulation applies to situations in which the complainant is requesting that the main be extended so that a utility, which actually has water, can supply water to a new area within the CC&N.

For example, hypothetically, assume that PWC somehow obtains significant additional water and the moratorium is lifted. Under those circumstances, Hill and his neighbors may desire to have the main extended so that their properties can receive Pine water.

Under those circumstances, R14-2-406 may apply. The commission drafted rules indicating that the cost of that main extension should be borne primarily by the new users

who would benefit directly from the extension, and not shared by the existing users who already have water.

Second, for economic reason we should both avoid R14-2-406. We proposed to PWC on numerous occasions that PWC enter into a wheeling agreement with complainants. This makes far more sense for both parties. It is far more economical for both parties. It satisfies the need for both parties. Hill would simply connect to the end of PWC's main with a meter and then run his own pipe from the end of the water main to his properties. Another meter would also be placed on Hill's well, before it entered PWC's system. PWC would be permitted to withdraw and use from Hill's well significantly more water than Hill withdraws or uses from the end of PWC's main. This accomplishes Hill's goal of bringing water to his property. It accomplishes PWC's goals of increasing its water supply. It does so at a cost and expense far less than a main extension as set forth in R14-2-406.

- 1.11 Have Complainants identified the projected demand for water associated with the development plans identified in response to data request 1.1? If the answer is in the affirmative, please state the projected demand and provide any and all documentation supporting such projected demand.

No, see #8 – the chicken and the egg.

- 1.12 Is it Complainants' position that the Company cannot require landowners, including Complainants to secure and/or convey water sources sufficient to meet the demand associated with the development plans identified in response to data request 1.1.

It is complainant's position that when the company will not or cannot supply water to complainant's property then complainant's property may be removed from the CC&N.

This statement that "the company cannot require landowners, including complainants to secure and/or convey water sources sufficient to meet the demand associated with developmental plans" is a bit convoluted, but still probably correct.

Jim Hill owns a well two miles away from his property. PWC has no means available to supply water to Hill's property. Quite simply, PWC does not have a sufficient water supply to provide additional water to Hill. When PWC reaches the point that they are unable to supply water, from their own sources, to Hill, Hill's property may be removed from the CC&N.

Likewise, Hill's neighbors (who do not own wells), who are also within the CC&N, and also have been denied water by PWC, are also eligible to be removed from the CC&N. Hill does not forfeit his right to be removed from the CC&N simply because he owns a well two miles from the property in question which hypothetically could be confiscated by PWC.

PWC has no right to Hill's well.

- 1.13 Is it Complainants' position that additional water supplies are available to Company to serve its customers? If the answer is in the affirmative, please explain the bases for Complainants' belief that such water source or sources are available to Company and provide any documents supporting Complainants' position that such source or sources are available to Company.

Complainants are aware of the following potential sources of water for PWC: Central Arizona Project, Blue Ridge Reservoir, Pine Creek, existing wells, new wells.

Complainants defer to Pugel regarding the first four above. Regarding #5, we believe that water sources are available to the company from existing wells. For example, in our own experience, we have offered to have Hill's well tested by PWC. Initially, they agreed – in writing -- to test the well for purposes of considering using that water. Then, for absolutely no specified reason, they refused to test the well. The preliminary proposals we had made would be that the company would receive significantly more water than Hill would use.

Regarding new wells, it appears that Mr. Pugel's well, even if it only provides 160 gallons per minute (the low estimate), will provide more water than all of PWC's existing 12 wells with pumps in Pine. Therefore, it does appear there are sufficient water sources underneath Pine or already in Pine which the company, for whatever reason, has failed to tap.

- 1.14 At page 3 of Complainants Application it is claimed that the Company, "because of the lack of capital facilities and failure to follow Commission orders" cannot provide water service to Complainants' properties. Please state the bases for this claim, including identification of the specific Commission orders referred to and please provide any documentation supporting such claim.

In decision #67823 the Corporation Commission indicated

"we expect representatives of PWC and the Commission's staff to be actively involved in analyzing and discussing all feasible long term permanent solutions to the water shortage issues in Pine. Consideration should be given to, at a minimum, the following: "growth limits on Gila County development outside of the Pine Water service area, additional well sources ..." Page 27

In the same document the Commission indicated,

It is further ordered that, in the analysis and discussions undertaken by the participating entities, consideration should be given to, at a minimum, the following: growth limits on Gila County development outside Pine Water service area, additional well sources, additional storage capacity... Page 13

We are currently aware of two examples where the company has failed to follow this Commission order. First, Hill's well, as outlined above. PWC refuses to even test Hill's well now.

Second, Pugel's well. Recently, the Pugel plaintiffs offered a settlement to PWC under which Pugel's well owners would entertain reasonable offers from PWC for water from Pugel's prolific well. PWC's attorney flatly rejected such an offer, instead indicating his desire to take the matter all the way to the Arizona Supreme Court.

PWC can indeed take the matter to the Arizona Supreme Court, but by doing so -- win, lose or draw -- they will have failed in the Commission's order to pursue additional well sources.

- 1.15 At page 4 of Complainants Application it is claimed that the Company "has failed to use its resources to develop a water system within its Certificated Area sufficient in size and capacity to provide for adequate and satisfactory water service for the Complainants." Please state the bases for this claim and please provide any documentation supporting such claim.

The mere fact that the waiting list has at times exceeded 300 properties is evidence that PWC had failed to use its resources to develop the water system within its CC&N to provide adequate water service for the complainants, and anyone else who has been asking for water for the last 10 years.

The fact that the previous owner of Hill's property asked on numerous occasions to have water meters provided to his commercial and residential property (which Hill now owns) is specific evidence that the company has failed to utilize its resources to develop water system within the CC&N to provide water to the such property.

- 1.16 Have Complainants had any discussions or negotiations with Gila County and/or any improvement district operating in Gila County regarding the provision of water utility service to the property? If so, please identify all such discussions, including the dates, times and participants and provide copies of any and all correspondence and other documents regarding such discussions or negotiations.

Hill has not been in negotiations with Gila County or any improvement district regarding such an improvement district providing service to Hill's property. Hill and his attorney have had brainstorming discussions with almost everyone in Pine who has water regarding options for bringing water to the commercial and residential property. However, Hill cannot recall any detailed discussions or anything that came close to a negotiation. Such negotiations will be pointless at this level until such properties are removed from the CC&N.

- 1.17 Please provide copies of any correspondence between any of the Complainants and the Company.

See H46-62.

- 1.18 Please provide copies of all documents supporting Complainants' assertion that Complainants requested and were denied service by Company including any correspondence between Complainants and the Company.

See H46-52.

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

If Hil remains within the CC&N, he would be subject to the same limitations as any other PWC user. If Hill is removed from the CC&N his property would not be entitled any water from the CC&N and would not be subject to its curtailment tariff. That curtailment tariff applies only to people who get water from PWC.

- 1.20 Complainants, on page 2 of their Application, refer to Company's inability to deliver water at a "reasonable rate." What constitutes "reasonable rates"?

The "reasonable rate" applies more to the start up cost than the monthly charge for water in the future. Hill would expect, if the company supplied water to him, to pay the same rates as other PWC users. However, if the company were to charge Hill a huge start up cost (attorney Shapiro has indicated that it would cost millions for the hook up then such a hookup charge would not be a reasonable rate.

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

Objection, poorly worded. We do not know what "have to pay a return on and of plant" means. Presuming that the company is asking about a scenario in which a new plant is built solely to provide water to Hill's property. When Hill agrees that those costs should be borne primarily by the new users. However, if the entire project includes a plant to provide additional water to PWC customers from Hill's well and part of the entire agreement includes plants or infrastructure, then those costs should be borne by both Hill and PWC since both are benefiting from the changes in the system. Existing users would benefit because there would be less water shortages, less hauling charges. PWC would

benefit for the same reasons. PWC also may benefit by allowing them to service additional meters with the water provided by Hill's well.

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

Wastewater collection treatments would presumably be septic. Electricity – probably power lines. Is there any other method? (Actually, there are power boxes on the land now.) There are no natural gas lines in Pine, everyone uses propane. The phone lines run to the property currently.

- 1.23 Regarding the response to data request 1.22, will Complainants pay any costs for wastewater collection and treatment infrastructure or infrastructure associated with the extension of any other utility service to Complainants' properties?

The ultimate owners of the property will most likely be the ones to pay for septic systems.

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

Negotiations began in March 2005. The agreement was reached sometime afterwards. The actual technical transfer of property occurred in July 2005.

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

Deny. PWC was refusing service to new users long before the moratorium was instituted. The ACC staff has determined that PWC did not have sufficient water sources to supply more than 1/3rd of its meters. Therefore, even if the moratorium were magically lifted, PWC simply does not have the water to supply properties beyond its current meters. In fact, it is probably over extended.

- 1.26 Admit that Complainants expect to earn a return on their investment by developing the parcels of property that are discussed in Mr. Hill's direct testimony.

benefit for the same reasons. PWC also may benefit by allowing them to service additional meters with the water provided by Hill's well.

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Negotiations began in March 2005. The agreement was reached sometime afterwards. The actual technical transfer of property occurred in July 2005.

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

Deny. PWC was refusing service to new users long before the moratorium was instituted. The ACC staff has determined that PWC did not have sufficient water sources to supply more than 1/3rd of its meters. Therefore, even if the moratorium were magically lifted, PWC simply does not have the water to supply properties beyond its current meters. In fact, it is probably over extended.

- 1.26 Admit that Complainants expect to earn a return on their investment by developing the parcels of property that are discussed in Mr. Hill's direct testimony.

Hill expects to prevail in this claim. Hill expects to be removed from the CC&N. He then expects to either use or sell the land. If he sells it, he hopes to make a profit – that is the primary goal of an investment. If he is forced to stay in the CC&N, he may not see any return.

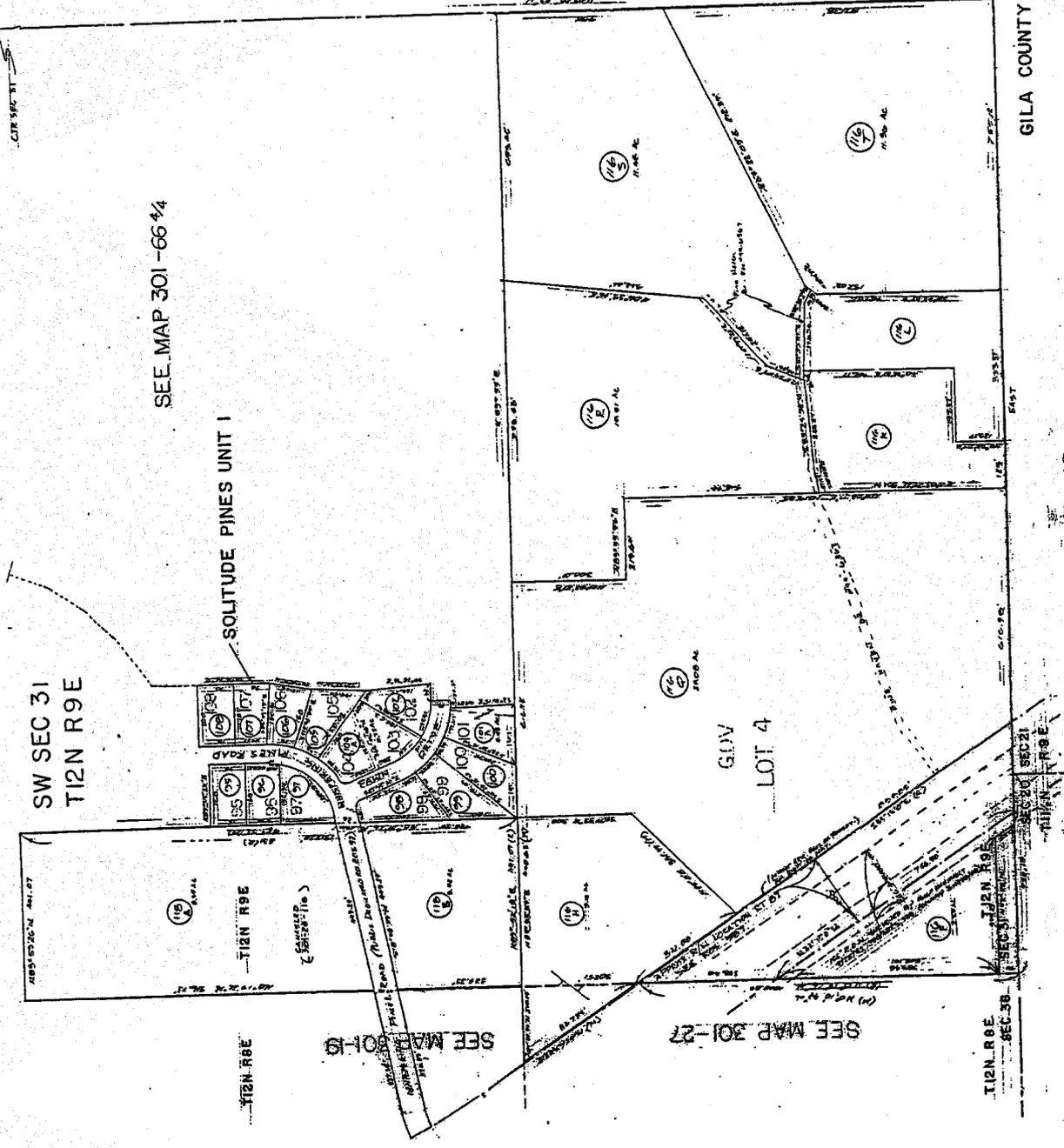
301-66 3/4
CODE 1276

UPDATED 6-3-00

SEE MAP 301-28 1/2

SCALE 1" = 200'
FOR INFORMATION ONLY
NO LIABILITY ASSUMED

GILA COUNTY ASSESSOR'S MAP



SEE MAP 301-66 1/4

SW SEC 31
T12N R9E

SOLITUDE PINES UNIT I

GIV
LOT 4

SEE MAP 301-27

SEE MAP 301-10

T12N R9E
SEC 38

DEPARTMENT OF WATER RESOURCES
15 South 15th Avenue
Phoenix, Arizona 85007

Registration No. 55-526079

File No. A(12-8)26add

COMPLETION REPORT

1. Per A.R.S. §45-600, the Completion Report is to be filed with the Department within 30 days after installation of pump equipment by the registered well owner.
2. Drawdown of the water level for a non-flowing well should be measured in feet after not less than 4 hours of continuous operation and while still in operation and for a flowing well the shut-in pressure should be measured in feet above the land or in pounds per square inch at the land surface.
3. The static groundwater level should be measured in feet from the land surface immediately prior to the well capacity test.
4. The tested pumping capacity of the well in gallons per minute for a non-flowing well should be determined by measuring the discharge of the pump after continuous operation for at least 4 hours and for a flowing well by measuring the natural flow at the land surface.

LOCATION OF THE WELL:

12 NORTH 8 EAST 26 SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
Township Range Section $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$

EQUIPMENT INSTALLED:

Kind of pump SUBMERSIBLE (GOULDS MODEL NO. 70 FG 50)
Turbine, centrifugal, etc.
Kind of power ELECTRIC H.P. Rating of Motor 5
Electric, natural gas, gasoline, etc.
Pumping Capacity 60.8 GPM AVERAGE DURING CONTINUOUS 72-HOUR TEST Date pump installed: DEC. 28, 1989
Gallons per minute

WELL TEST:

DURING CONTINUOUS 72-HOUR TEST
Test pumping capacity 60.8 GPM AVERAGE Date Well Tested: DEC. 28/31, 1989
Gallons per minute
Method of Discharge Measurement KENT 2" TOTALIZING FLOWMETER #N 89123791
Weir, orifice, current meter, etc.

Static Groundwater Level 134 ft. Drawdown 75 ft.
Total Pumping Lift 209 ft. Drawdown NOT APPLICABLE lbs.
(Flowing Well)

I HEREBY CERTIFY that the above statements are true to the best of my knowledge and belief.

KENNETH H. JONES

Print Well Owner's Name

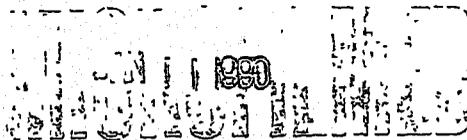
Kenneth H. Jones
Signature of Well Owner or Agent

5535 CASA BLANCA ROAD
Address

PARADISE VALLEY, AZ 85253

City State Zip

JANUARY 9, 1990
Date



ARIZONA DEPARTMENT OF WATER RESOURCES
Operations Division
15 South 15th Avenue
Phoenix, Arizona 85007

CHANGE OF WELL INFORMATION

Well Reg. No. 55-526079

File (location) No. A(12-8)26add

I/We request the following well information be changed:

WHEN THE APPLICATION TO DRILL THIS WELL WAS SUBMITTED TO ADWR, IT WAS ESTIMATED THAT ONE ACRE-FOOT OF WATER WOULD BE PUMPED EACH YEAR. THE RESULTS OF A 72-HOUR CONTINUOUS PUMPING TEST INDICATE THAT (ASSUMING THAT THE 81,500 GALLONS PER DAY FLOW RATE DURING THE FINAL 24 HOURS OF THE TEST IS SUSTAINABLE) A PUMPING CAPACITY OF 91.3 ACRE-FEET PER YEAR IS INDICATED.

THEREFORE I REQUEST THAT THE CATEGORY OF THE WELL BE CHANGED FROM EXEMPT TO NON-EXEMPT.

Date: JANUARY 9, 1990

Kenneth H. Jones
Signature of current Well Owner

(DO NOT CUT THIS FORM IN HALF)

STATEMENT OF CHANGE OF WELL OWNERSHIP

I, _____, state that I am (no longer) the (new)
(please print)
owner of the well described below:

Township _____ Range _____ Section _____; _____ 1/4 _____ 1/4 _____ 1/4

Well Registration No. _____ File (location) No. _____

Previous Owner

PRINT New Owner's Name

Address

Signature of New Owner

City State Zip

Address

DATED: _____

City State Zip

NOTE: A.R.S. §45-593.C. requires that the Department be notified of change of well ownership and that the well owner is required to keep the Department's Well Registration records current and accurate. Well data and ownership changes must be submitted within thirty (30) days after changes take place.

SAVE THIS FORM TO REPORT FUTURE CHANGES IN OWNERSHIP, CHANGES IN ADDRESS, OR CHANGE IN WELL DATA SUCH AS PUMP CAPACITY, CORRECTION OF LEGAL DESCRIPTION, CHANGE OF WELL DRILLER, PRIOR TO DRILLING THE WELL, IN ADDITION TO AMENDING INFORMATION PREVIOUSLY FILED.

JAN 11 1990

72-HOUR CONTINUOUS TEST OF WELL NO. A (12-8) 260dd
(ADWR REGISTRATION NO. 55-526080)

WELL LOCATION:

NORTH OF PINE, ARIZONA, ON EAST SIDE OF STATE ROUTE 87
AT MILE POST NO. 269 (SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SECTION 26, T12N, R8E)

DEPTH OF WELL:

300 FEET AS MEASURED FROM TOP OF STEEL CASING.

EQUIPMENT USED:

GOULDS 5HP MODEL NO. 70FG50 SUBMERSIBLE PUMP SET IN
WELL AT DEPTH OF 281 FEET TO PUMP INLET.
PUMP POWERED BY 15 KW DIESEL GENERATOR SET.
WATER FLOW MEASURED USING KENT 2" TOTALIZING
FLOWMETER S/N 89123791.

DATE OF TEST:

BEGAN TEST AT 14:10 THURSDAY, DEC. 28, 1989.
COMPLETED 72-HOUR CONTINUOUS TEST AT 14:10 SUNDAY, DEC. 31, 1989.

TEST DATA TAKEN BY K.H. JONES, OWNER OF WELL.

SUMMARY OF TEST RESULTS:

DURING ENTIRE 72-HOUR TEST:

262,700 GALLONS OF WATER PUMPED.
60.8 GPM AVERAGE RATE OF FLOW.

DURING FINAL 24 HOURS OF TEST:

81,500 GALLONS OF WATER PUMPED.
56.6 GPM AVERAGE RATE OF FLOW.

TOTAL PUMPING LIFT:

209 FEET

STATIC GROUNDWATER LEVEL PRIOR TO TEST:

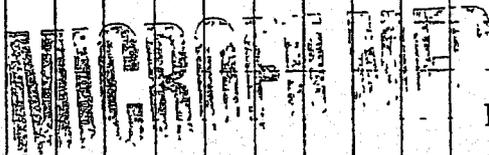
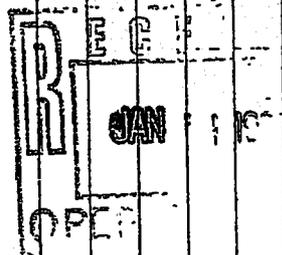
134 FEET

PUMP DRAWDOWN:

75 FEET

GEOLOGY:

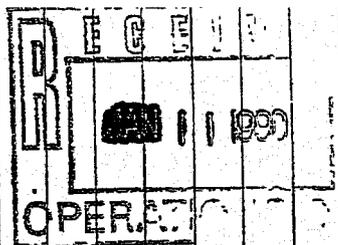
0 TO 35': COCONINO SANDSTONE
35' TO 115': SUPAI FORMATION
115' TO 300': REDWALL LIMESTONE



H16

Kenneth A. Jones

DATA SHEET FOR 72-HOUR CONTINUOUS TEST OF WELL NO. A(12-8)26 odd



DATE	TIME	FLOW RATE (GPM)	FLOW TOTALIZER READING (GALLONS)	WATER LEVEL (FEET FROM TOP OF CASING)	
12/28/89	14:10		0000	134'-0"	
	14:20	82.0	0820	160'-0"	
	14:50	80.0	3240	168'-0"	
	15:10	78.5	4840	170'-9"	
	15:30	78.0	6500	173'-9"	
	15:50	77.5	8040	176'-3"	
	16:10	77.0	9610	178'-5"	
	16:30	76.5	10950	180'-0"	
	16:50	75.5	12700	182'-0"	
	17:30	74.5	15500	185'-0"	
12/29/89	18:30	74.0	19960	188'-5"	
	20:30	71.5	28800	190'-6"	
	1:00	69.5	47900	204'-0"	
	2:00	68.5	51700	205'-3"	
	6:00	66.0	68800	209'-0"	
	GENERATOR SET NOT HOLDING STEADY 60 CPS FREQUENCY				
	9:00	64.0	80000	209'-0"	
	12:00	62.0	90900	209'-0"	
	15:00	60.5	102000	209'-0"	
	18:00	58.2	112600	209'-0"	
21:00	55.0	122800	209'-0"		
12/30/89	1:00	55.5	135900	209'-0"	
	8:00	57.0	160000	209'-0"	
	12:00	60.0	173800	208'-8"	
	14:00	58.6	180600	208'-8"	
	17:00	58.7	191200	208'-8"	
	20:00	58.5	201800	208'-8"	
	12/31/89	2:00	57.5	223600	209'-0"
		8:00	55.3	223600	209'-0"
		11:00	54.0	252700	209'-2"
		13:00	52.5	259000	209'-1"
13:45		53.0	261400	208'-10"	
14:10		53.0	262700	208'-10"	
SHUT DOWN AT 14:10 — END OF 72-HOUR TEST					



LEASE AGREEMENT

This Lease Agreement between Lessor, Kenneth H. & Norma E. Jones and their heirs or assigns, and Lessee, E&R WATER COMPANY, INC., an Arizona Corporation or its assigns, is entered into this 23rd day of June, 1995.

The Parties hereto agree as follows:

1. Upon receipt of \$1,000.00 Lessor agrees to lease well site, well no. A(12-8) 26 ADD, and Gould Model 70 FG 30 Pump to Lessee beginning June 23, 1995 and ending September 10, 1995. The legal description of the well site is attached and identified as Exhibit "A".
2. Before operating the well, Lessee agrees to purchase and install one Kent 2" totalizing flowmeter as a replacement for one previously damaged by lessee. The flowmeter shall become the property of Lessor at the time of installation.
3. Lessee agrees to supply Lessor with well data taken at intervals not to exceed once every two weeks. this data shall consist of flow totalizer reading, water pumping rate and water level as measured from top of well casing.
4. Lessor makes no representation as to the quantity or quality of the water which this well is capable of producing.
5. Lessor shall have the right to enter the well site at any time and to conduct or witness pumping tests.
6. Prior to signing this lease agreement , Lessee will provide Lessor with a certificate of insurance which names the Lessor as an additional insured. Lessee herein indemnifies Lessor of the well during the period of this lease. this indemnification includes, but is not limited to, liability in the event of any type of accident which may occur in connection with the operation of this well.

It is the responsibility of Lessee to post warning signs and keep unauthorized personnel away from the well site and the meter/generator set. Lessee agrees to connect the electrical wiring from the generator to the well in a manner which will preclude the possibility of an electrical shock. There shall be no exposed terminals or uninsulated wiring either at the well head or at the generator.

7. Lessee shall allow no lien nor other encumbrance of whatsoever nature to attach to this property described in Exhibit "A". Lessee agrees to indemnify and hold Lessor harmless from any and all liability, cost or expense of whatsoever nature, including attorney's fees and costs, arising out or in any manner associated with this lease agreement, including but not limited to, Lessee's use of the well site, Lessee's operation, or any of Lessee's activities undertaken in relation to this property. Lessee's rights in this lease agreement are personal and may not be assigned without the express prior written permission of Lessor. The individuals executing this lease agreement warrant that they are authorized to execute this lease agreement on Lessor's and Lessee's behalf.
8. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
9. Immediately after the expiration of this lease agreement, Lessee shall remove his equipment from the well site. Those items not removed by September 10, 1995 shall become the property of the Lessor.
10. Lessee understands that Lessor is not obligated to enter into a new lease agreement at any time subsequent to the expiration of this lease agreement.
11. The Flowmeter and all other equipment owned by Lessor must be maintained in good working order at Lessee's expense throughout the period of this lease. If a malfunction of the Flowmeter occurs, the pump must be shut down until the Flowmeter is repaired or replaced. At the end of this lease, it shall be the responsibility of Lessee to restore all equipment owned by Lessor to good working order at Lessee's expense.

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..... Continued on Next Page

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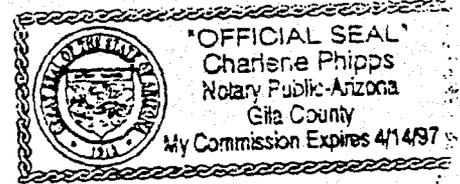
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

"Company"

E&R water Company, Inc., an Arizona Corporation

by:

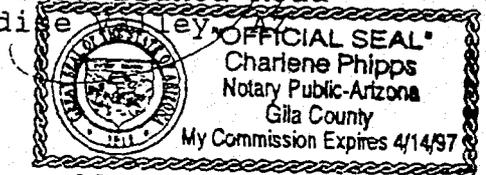
Richard S. Williamson
Richard S. Williamson, President
P.O. Box 1586
Payson, Arizona 85547



"Lessor"

Kenneth H. Jones
Kenneth H. Jones
5535 Casa Blanca Road
Paradise Valley, Arizona 85253

Norma E. Jones
Norma E. Jones
5535 Casa Blanca Road
Paradise Valley, Arizona 85253



State of Arizona
County of Gila

On this date, before me, a Notary Public, personally appeared *Richard S. Williamson*, who, being duly sworn upon oath, stated that he had read this document and knows of his own knowledge that the facts stated within are true and correct, except for those matters which he believes to be true.

Charlene Phipps
(Signature of Notary)

4-14-97
(Notary Expiration Date)

State of Arizona
County of Maricopa

On this date, before me, a Notary Public, personally appeared *Kenneth Jones and Norma Jones*, who, being duly sworn upon oath, stated that he had read this document and knows of his own knowledge that the facts stated within are true and correct, except for those matters which he believes to be true.

Charlene Phipps
(Signature of Notary)

4-14-97
(Notary Expiration Date)

MAR 10 2007

Mar. 8, 2007
5535 N. Casa Blanca Drive
Paradise Valley, AZ 85253
Phone: 480-946-8379/FAX: 480-946-4221

Dear Mr. Davis:

In response to your March 1, 2007, letter, I am fortunate to find that I still have well test data for the well north of Pine which I sold to Jim Hill.

This well is registered with the Arizona Department of Water Resources as well number 55-526079 and is also designated by ADWR as well number A(12-8) 26 a d d.

Enclosed are the following:

Attachment No. 1

Test data for continuous 72-hour test in which 262,700 gallons of water were pumped shortly after well was completed on Dec 28, 1998.

Attachment No. 2

Summary of pump operation ending July 10, 1995. A total of 3,459,680 gallons were pumped. Most of this water was pumped by Utility Management & Operation Services after I gave them permission to use my well.

Attachment No. 3

Results of water analysis by Arizona Testing Laboratories.

Attachment No. 4

This is a letter prepared by Jim Hill which summarizes a meeting attended by Ron Christensen, Jim Hill and Ken Jones.

Attachment No. 5

This is a Lease Agreement wherein I agreed to lease my well to the E & R Water Company beginning June 23, 1995, and ending Sept. 10, 1995. The price paid to me for the lease was \$1000.⁰⁰.

Sincerely,
Kenneth A. Jones

This info given to Ron Christensen at Oct 9th mtg { *Jim Hill*
Ron Jones

Attachment #3

During a meeting in the office of District 1 Supervisor, Ron Christensen, Mr. Ken Jones, of Paradise Valley, offered a partial solution to the Pine water shortage. Mr. Jones offered to donate a 300-foot well (ADWR Registration No. 55-526079) at highway 87's milepost 269, on the north end of Pine, to the Brooke Utility System.

The offer includes the well, pumping machinery and real estate, as well as easements between the well site and the Brooke Utility water tank.

This offer is contingent upon Brooke's agreement to install water meters to Mr. Jones five-lot housing development, and commercial property on the south edge of Pine. The remaining pumping capacity of the well, believed to be enough to supply approximately

360 homes, will be distributed at the discretion of the Utility.
too high (should be 310 to be consistent)

A 72-hour well test, conducted in December of 1989 measured the output of the well at between 2,200,000 and 3,500,000 gallons per month. Recent pumping has verified that the output measured in 1989 is still accurate.

Even assuming the well's sustainable continuous output drops to one-third of the average test flow, or slightly over 31,000 gallons per day, the output will be sufficient to supply the needs of hundreds of Pine area homes.

310 homes, assuming usage of 100 gal/day/home.

21.5 gpm

During the Dude Fire, this well was considered significant enough to be commandeered by Governor Rose Mofford, and pumped continuously by the National Guard as a fire fighting resource.

Indications are that adding this well to the Brooke System will significantly reduce, if not completely remove the need for Pine's water meter moratorium.

If a shortage of water is the only obstacle creating the Pine water shortage, then Mr. Jones' offer to donate this producing well to Brooke Utilities is certainly a viable solution.

Mr. Jones sincerely hopes the management of Brooke Utility will accept this opportunity to significantly reduce, Pine's long-standing water shortage problems.

TURLEY, SWAN & CHILDERS, P.C.

ATTORNEYS AT LAW
3101 NORTH CENTRAL, SUITE 1300
PHOENIX, ARIZONA 85012-2643
(602) 254-1444
FACSIMILE (602) 287-9468

CHRISTOPHER J. BORK
MICHAEL J. CHILDERS*
DAVID W. DAVIS
CRAIG SOLOMON GANZ
SCOTT HUMBLE
RICHARD L. RIGHI
JOSEPH B. SWAN, JR.*
DANIEL TORRENS
KENT E. TURLEY

*CERTIFIED SPECIALIST, INJURY AND
WRONGFUL DEATH LITIGATION
ARIZONA BOARD OF LEGAL SPECIALIZATION

September 1, 2005

Via Fax 602-916-5566

Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012

Dear Jay:

Thank you for taking the time to speak with me regarding the Pine water situation. I really appreciate your help.

I understand, from reading various corporate commission rulings, that Mr. Hardcastle is looking for a solution to the Pine water problem. I spent this last summer up in Pine. The water restrictions always stayed at a one level. It therefore appears that your client is already having some success with the water problem. After reading through some of the corporate commission documents, I agree with Mr. Hardcastle that the people of Pine need to start looking for solutions instead of simply making unfounded accusations.

I hope we have a possibility of working with Mr. Hardcastle to help the water situation in Pine.

My client, Jim Hill, has a well in Pine. He also has some property in Pine, some commercial and some residential. Some that may be within Pine's water district and some that probably is not within Pine's water district. The well is not on the property. Therefore, we are looking for some type of an agreement under which the well would be pumped into Pine's water system. Mr. Hill would remove water from Pine's water system. Excess water from the well would be added to Pine's water system.

In looking through corporate commission documents, it appears that Pine water has three such agreements. I was looking at a document entitled Pine Water Company, Inc. 2004 Annual Report, page 10b. It identified three water agreements which provided over a third of the gallons sold to Pine customers: STWID (20 gpm, 8.2 million), water sharing agreement "B" (13 gpm, 5.8 million), water sharing agreement "W" (8 gpm, 4.6 million). Based upon the previous history of my client's well, we believe his output would be comparable to these wells. Perhaps if it all works out, your 2005 annual report could include, "water sharing agreement 'H'."

I would like to get started on discussions so that we could consider the sharing agreement. I understand that numerous topics would need to be considered such as well testing, hookups, and meters.

My hope is that we can come to some sort of arrangement that is a win for every party. My client would be able to bring water to his land. The people of Pine would have a significant amount of additional water. Brooks would be able to obtain water piped directly into their system instead of paying for the cost to haul it from Starlight Pines in Payson. The corporate commission would see that Pine Water Company is working diligently with the Pine citizens to incrementally improve the water situation.

I am not sure what comes first – discussions of the agreement or testing of the well. However, if your client has a particular entity that he is required to use for well testing it might be helpful if we knew that information early on. We would also need to know what types of testing are required before he can enter into this type of an agreement.

There is one potential stumbling block I should identify now. My client went to ASU and is a diehard Sun Devil fan. He may not trust a couple of Wildcats working on his business.

I look forward to hearing from you.

Very truly yours,

David W. Davis
For the Firm

DWD:be
Enclosure

cc: Jim Hill (w/encl.)
G:\Bev\Plaintiff PlaintiffHill\Shapiro.001.wpd

TURLEY, SWAN & CHILDERS, P.C.

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KENT E. TURLEY

*CERTIFIED SPECIALIST, INJURY AND
WRONGFUL DEATH LITIGATION
ARIZONA BOARD OF LEGAL SPECIALIZATION

September 6, 2005

VIA FACSIMILE #781-823-3070

Robert Hardcastle
Pine Water Company

Dear Mr. Hardcastle:

I enjoyed speaking with you regarding your Pine water utility and Mr. Hill's well.

Enclosed is the well documentation that you requested. The documents list Ken Jones as the owner. My client, Jim Hill, recently purchased the well. It may take a few weeks for the paperwork to become final.

From what you told me, I understand that there may be some obstacles to be overcome. Although we do not welcome these difficulties, sometimes there are greater rewards from completing the more difficult deals. Regardless, I do appreciate your willingness to look at the possibilities.

You and Jay are far more expert on water law than I. Primarily, I am a trial attorney. However, based what you explained to me, it appears that we need to tackle three areas:

1. Is it legal for Pine Water Company to use Hill's well?

I believe these documents should be precise enough to allow you to determine whether or not this well is within your water district. If it is within your water district then perhaps there is no issue of concern. If it is within the Portal water district, then I believe you raise an interesting question. Is there any regulation or procedure which keeps you from pumping water from that area into your system?

2. Is it economically viable to connect this well to Pine's water system?

I spoke to my client regarding the connection issues. He raised a few points. Most of this information is from Ken Jones so I have to admit that it is second or third hand. Mr. Hill indicated that he thought the same well had been leased to Pine Water for a short period of time a few years ago. If so, then there must have been some manner of connecting the well to Pine's water. Perhaps that same method could be employed again.

Mr. Jones also spoke of an existing easement across the highway. Again, this is second hand, but perhaps worth exploring.

3. Is the well strong enough to warrant your interest?

In looking through these documents I printed from the Water Resources Department, I tend to agree with your interpretation. It appears that Mr. Jones may have overstated the flow rate of the well. I see that during one test it pumped over 50 gallons a minute for three days. I agree that it seems unlikely that any well in the Pine area could be so strong. Mr. Hill was thinking that a 20 gallon well should be sufficient. These test results would seem to be at least somewhat positive along those lines.

Mr. Hill is agreeable to have you flow of the well tested. To the extent that you could find a use for the water during the testing so that it is not wasted, he has no objection. He is willing to donate that water during the test to any worthy candidate.

If there is any way that we can assist you in your analysis on either of the three topics above, or anything else, please let me know.

We are not under any strict time limits. However, to the extent that you are able to start this investigative process quickly we would be amenable. Just let us know what else you need from us.

One final note. I have taken the opportunity over these last few weeks to read through some corporation commission documents regarding the Pine water history. I do have some sympathy for you based upon what I have read. You purchased a sinking ship several years ago. Slowly but surely, it seems as if you have been patching the holes and now have the system afloat. It is quite disappointing to see the constant barrage of complaints from Pine citizens when the situation clearly has been improved over the years. I wish you continued success with the Pine water system. More importantly, I wish you some understanding and appreciation from the citizenry.

I look forward to hearing from you.

Very truly yours,

David W. Davis
For the Firm

DWD:be

Enclosure

cc: Jim Hill

G:\Bev\Plaintiff Plaintiff\Hill\Hardcastle.001.wpd

David Davis

From: David Davis
Sent: Tuesday, October 04, 2005 3:50 PM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

Bob,

Good to hear from you. I'll deal with Portals IV. They may gripe, but Hill's well is 8 years older than their water district.

Hill agrees to the water test. Hill wants to be present when the test starts. He has a lock on the well. He has a paper which gives him access to the well from the portals road. I assume you want to use his current pump. I believe that it will pump 70 gpm for at least the first hour.

Look forward to hearing from you.

David

From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Friday, September 30, 2005 10:36 AM
To: David Davis
Cc: Mistie Jared; Shaun Stouder
Subject: RE: Water Sharing Agreement

David-

Thanks for your message and recently received further documents. We have concluded, more or less, that we believe Title 45 does not limit a municipality (i.e. interpreted in this instance as a city/county/improvement district subdivision, etc.) from transferring water outside of it's boundaries, where an AMA is NOT present, as long as the use of the water is for "reasonable use". Of course, that interpretation and belief could be challenged.

I do need to be clear with you and your client on another issue. If we determine the water quality and quantity is of interest to us and *if* we can figure out an economical way of legally moving the water to our water system (maybe not under the highway), you should know that this will be a very unpopular decision with fellow homeowners of Portal IV as well as the water improvement district. Their concern is of little interest to me but that might be something your client should carefully consider before we proceed further. Different people fell differently about neighborly confrontations. In my experience in Pine and Strawberry you always must be prepared for the illogical, unexplainable, and unexpected.

That said, in the next week or so we'll be making arrangements for a 72-hour stress pump test to determine the actual water available. Thereafter, we can determine whether we both have a sufficient basis to proceed with this matter.

Please advise as desired.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
O. Box 82218
Yakima, WA 98908-2218
(509) 633-7526 phone
(509) 823-3070 fax
RTH@brookeutilities.com

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Thursday, September 29, 2005 8:27 PM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

Bob,

Hello. Hope all is well with you. I suspect you can relax a bit after the hundred days war is over.

I found one more document which I will fax tomorrow. It shows a map and legal description of Portals IV. You can see on the map Hills sliver of property. It is the corner of 87 and the north emergency exit of Portals. I cannot tell from the legal description if Hill's land is in or out of Portals.

I believe I have sent all the rest that I have on Hill's well. I don't think there is a current right of way across 87.

I understand that we need to locate the closest low pressure water pipe, then determine the feasibility and the cost of the connection. Is that something you need to do on your end, or can we help?

David

David Davis

From: Bob Hardcastle [rth@brookeutilities.com]
Sent: Friday, September 30, 2005 10:36 AM
To: David Davis
Cc: Mistie Jared; Shaun Stouder
Subject: RE: Water Sharing Agreement

David-

Thanks for your message and recently received further documents. We have concluded, more or less, that we believe Title 45 does not limit a municipality (i.e. interpreted in this instance as a city/county/improvement district subdivision, etc.) from transferring water outside of it's boundaries, where an AMA is NOT present, as long as the use of the water is for "reasonable use". Of course, that interpretation and belief could be challenged.

I do need to be clear with you and your client on another issue. If we determine the water quality and quantity is of interest to us and *if* we can figure out an economical way of legally moving the water to our water system (maybe not under the highway), you should know that this will be a very unpopular decision with fellow homeowners of Portal IV as well as the water improvement district. Their concern is of little interest to me but that might be something your client should carefully consider before we proceed further. Different people fell differently about neighborly confrontations. In my experience in Pine and Strawberry you always must be prepared for the illogical, unexplainable, and unexpected.

That said, in the next week or so we'll be making arrangements for a 72-hour stress pump test to determine the actual water available. Thereafter, we can determine whether we both have a sufficient basis to proceed with this matter.

Please advise as desired.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218
(661) 633-7526 phone
(781) 823-3070 fax
RTH@brookeutilities.com

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Thursday, September 29, 2005 8:27 PM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

Bob,

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I found one more document which I will fax tomorrow. It shows a map and legal description of Portals IV. You can see on the map Hills sliver of property. It is the corner of 87 and the north emergency exit of Portals. I cannot tell from the legal description if Hill's land is in or out of Portals.

I believe I have sent all the rest that I have on Hill's well. I don't think there is a current right of way across 87.

I understand that we need to locate the closest low pressure water pipe, then determine the feasibility and the cost of the connection. Is that something you need to do on your end, or can we help?

David

David Davis

From: Bob Hardcastle [rth@brookeutilities.com]
Sent: Tuesday, September 13, 2005 4:10 PM
To: David Davis
Subject: RE: Water Sharing Agreement

Yes, please. All of that type of background information is helpful.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218
(661) 633-7526 phone
(781) 823-3070 fax
RTH@brookeutilities.com

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Tuesday, September 13, 2005 9:45 AM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

Bob -- Thanks for you email last week. Sorry I didn't get back to you sooner. I was in a tough trial down in Tucson. I appreciate your attention and efforts to our request. I will try to locate any easement information.

I did get a copy of a February 1990 Lab report, a Notice of Value from February 2002 and a chart from the well test in 1989. Please let me know if you would like those faxed.

Thanks again,

David

— I may have sent you some blank replies yesterday. Sorry, my mouse was sticking.

From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Wednesday, September 07, 2005 2:35 PM
To: David Davis
Subject: RE: Water Sharing Agreement

David-

Thanks for your correspondence and the supporting documentation. I believe you have correctly analyzed the issues related to JH's well.

The first two additional threshold issues are, in my opinion, telling of our future interest and involvement.

- (1) I have asked JS to look at the question of water yield from inside a WID to a public service corporation with a CC&N outside of the District boundaries. I suspect there is no statutory guidance but there may be some policy directives from either ADWR, ACC, or Gila Co. We'll need a couple of days to sort this out. My instinct tells me that it may not be politically popular in the area but there is probably not prohibition against it. We may just ultimately ask Gila Co. for permission to use the water.
- (2) Access easements are another issue. In Gila Co. the issues of ingress, egress, easements, rights-of-way, etc., are used and thrown around very loosely. It has been my experience that never is a property, easement, access, etc., legally described in the same position that local people say it is. Thus, long ago we decided to survey and obtain a legal description of every property issue we encounter. I am not aware of "easements" issued for access across ADOT highways. Most all cases of access involve ROW's and require engineering plans, applications, ownership supporting documents, and recordation. That isn't to say an easement wasn't issued circa 1998 but it would be unusual. If an easement exists it should be recorded in Gila Co. accordingly. Whether it's an easement or ROW it would be very helpful if you could obtain that document or determine it doesn't exist. Either answer gives us guidance as to how to proceed. I am fairly confident ADOT is not going to recognize a prescriptive easement for this water distribution line unless it clearly satisfies the legal elements.

Maybe we'll have more information to share in a few days.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
P. O. Box 82218
Bakersfield, CA 93380-2218
(661) 633-7526 phone
(781) 823-3070 fax
RTH@brookeutilities.com

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Tuesday, September 06, 2005 6:41 PM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

---TURLEY, SWAN & CHILDERS, P.C.

CHRISTOPHER J. BORK

MICHAEL J. CHILDERS*

DAVID W. DAVIS

CRAIG SOLOMON GANZ

SCOTT HUMBLE

RICHARD L. RIGHI

JOSEPH B. SWAN, JR.*

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KENT E. TURLEY

ATTORNEYS AT LAW

3101 NORTH CENTRAL, SUITE 1300

PHOENIX, ARIZONA 85012-2643

(602) 254-1444

FACSIMILE (602) 287-9468

September 6 , 2005

VIA FACSIMILE #781-823-3070 and Email

Robert Hardcastle

Pine Water Company

Dear Mr. Hardcastle:

I enjoyed speaking with you regarding your Pine water utility and Mr. Hill's well.

Enclosed (by fax) is the well documentation that you requested. The documents list Ken Jones as the owner. My client, Jim Hill, recently purchased the well. It may take a few weeks for the paperwork to become final.

From what you told me, I understand that there may be some obstacles to be overcome. Although we do not welcome these difficulties, sometimes there are greater rewards from completing the more difficult deals. Regardless, I do appreciate your willingness to look at the possibilities.

You and Jay are far more expert on water law than I. Primarily, I am a trial attorney. However, based what you explained to me, it appears that we need to tackle three areas:

1. Is it legal for Pine Water Company to use Hill's well?

I believe these documents should be precise enough to allow you to determine whether or not this well is within your water district. If it is within your water district then perhaps there is no issue of concern. If it is within the Portal water district, then I believe you raise an interesting question. Is there any regulation or procedure which keeps you from pumping water from that area into your system?

2. Is it economically viable to connect this well to Pine's water system?

I spoke to my client regarding the connection issues. He raised a few points. Most of this information is from Ken Jones so I have to admit that it is second or third hand. Mr. Hill indicated that he thought the same well had been leased to Pine Water for a short period of time a few years ago. If so, then there must have been some manner of connecting the well to Pine's water. Perhaps that same method could be employed again.

Mr. Jones also spoke of an existing easement across the highway. Again, this is second hand, but perhaps worth exploring.

3. Is the well strong enough to warrant your interest?

In looking through these documents I printed from the Water Resources Department, I tend to agree with your interpretation. It appears that Mr. Jones may have overstated the flow rate of the well. I see that during one test it pumped over 50 gallons a minute for three days. I agree that it seems unlikely that any well in the Pine area could be so strong. Mr. Hill was thinking that a 20 gallon well should be sufficient. These test results would seem to be at least somewhat positive along those lines.

Mr. Hill is agreeable to have you flow of the well tested. To the extent that you could find a use for the water during the testing so that it is not wasted, he has no objection. He is willing to donate that water during the test to any worthy candidate.

If there is any way that we can assist you in your analysis on either of the three topics above, or anything else, please let me know.

We are not under any strict time limits. However, to the extent that you are able to start this investigative process quickly we would be amenable. Just let us know what else you need from us.

One final note. I have taken the opportunity over these last few weeks to read through some corporation commission documents regarding the Pine water history. I do have some sympathy for you based upon what I have read. You purchased a sinking ship several years ago. Slowly but surely, it seems as if you have been patching the holes and now have the system afloat. It is quite disappointing to see the constant barrage of

complaints from Pine citizens when the situation clearly has been improved over the years. I wish you continued success with the Pine water system. More importantly, I wish you some understanding and appreciation from the citizenry.

I look forward to hearing from you.

Very truly yours,

David W. Davis

For the Firm

DWD:be

Enclosure

cc: Jim Hill

G:\Bev\Plaintiff PlaintiffHill\Hardcastle.001.wpd

From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Tuesday, September 06, 2005 1:28 PM
To: David Davis
Subject: RE: Water Sharing Agreement

Very well.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218
(661) 633-7526 phone
(781) 823-3070 fax
RTH@brookeutilities.com

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Tuesday, September 06, 2005 1:27 PM
To: Bob Hardcastle
Subject: RE: Water Sharing Agreement

Thanks,
This will take some time to read.
Well is 55-526079
I should have some documents to you soon
David

From: Bob Hardcastle [mailto:rth@brookeutilities.com]
Sent: Tuesday, September 06, 2005 10:24 AM
To: David Davis
Subject: Water Sharing Agreement

Please find attached a model Water Sharing Agreement that we have used with many other water sharing partners.

RTH

Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, CA 93380-2218
(661) 633-7526 phone
(781) 823-3070 fax
RTH@brookeutilities.com

David W. Davis

For the Firm

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Sunday, November 12, 2006 8:29 AM
To: David Davis
Subject: RE: Hardcastle

Here you are:

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Wednesday, November 08, 2006 8:47 AM
To: David Davis
Subject: RE: Pine Water Company

David--You have written two letters threatening to sue PWCO and now a lengthy email advancing your clients' position, yet you are critical of me for responding in detail. I find that ironic at best. Put bluntly, you have created the circumstances we now find ourselves in and PWCo must now ensure that all communications are documented in order to ensure its positions are neither misunderstood or misquoted. .

Towards that end, I have inserted PWCo's responses below. Due to the nature and content of your email, some of the responses will be redundant, but the issues are critical and worthy of repeated explanation. The responses are in blue and preceded by my initials.

Jay

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Tuesday, November 07, 2006 4:02 PM
To: SHAPIRO, JAY
Subject: Hardcastle

November 7, 2006

via email

Jay L. Shapiro

Fennemore Craig, P.C.

903 N. Central Ave., Suite 2600

Phoenix, Arizona 85012

RE: Hill v. Pine Water Company

Dear Jay:

I received your November 6, 2006 letter. We could engage in a letter writing war. However, I would rather not. I assume you are billing Mr. Hardcastle for your time. He then calculates his attorney fees as a factor when asking the corporation commission for a rate increase for the citizens of Pine. I certainly do not want to contribute to that increase unless it is absolutely necessary. So, let's make this simple. I have two questions:

[JLS--First, my clients and the owner of the water system are Pine Water Company (PWCo) and Brooke Utilities. Efforts by you and others to portray the entity as "Mr. Hardcastle" have grown tiresome. Fortunately, Arizona law respects the corporate structure. Second, any engineering, hydrology, legal and other administrative costs associated with the extension of service by PWCo to the Hills' residential and commercial developments will be paid for by the landowners and treated as an advance in aid of construction.]

1. **Will you agree to test the well?** On September 30, 2005 your client sent me an e-mail indicating the following:

That said, in the next week or so we'll be making arrangements for a 72 hour stress pump test to determine the actual water available. Thereafter, we can determine whether we both have a sufficient basis to proceed with this matter.

On October 4, 2005, I responded as follows: "Hill agrees to the well test. Hill wants to be present when the test starts."

I was under the impression that Mr. Hardcastle is a man of his word. He has agreed to test the well. However, your letter implies that he is no longer willing to test this well. In response to this question, I do not need four page letter. A few lines will do.

[JLS--Your clients are proposing to undertake residential and commercial development in an area long known to be subject to water supply limitations. I find it hard to believe that they not conducted sufficient due diligence to supply the local water provider and others with information to support the claim that they can provide PWCo with one million gallons per month of water. Indeed, I understand the Hills recently announced publicly that they were going to conduct tests on the well late last month. In any event, testing the Hills' well requires testing to be conducted in phases--a 72 hour step test followed by a 7-10 day test aimed at determining sustainability. These tests will cost \$10,000 or more. Given that you and your clients have not provided current and credible information from which PWCo can determine whether it is prudent to pursue an arrangement to exchange or purchase water from the Hills, PWCo cannot justify expending such costs. Again, PWCo's own information is that the Hills' well cannot sustain anywhere near the type of yield you are claiming.

In addition, there are substantial questions regarding the manner in which the Hills' well would be connected to the PWCo system. While we have seen no engineering from the landowners, we understand that substantial infrastructure costs are likely and that interconnection will require federal and/or state permits including those necessary for water lines to cross federal property and to go under Highway 87.

In short, it would hardly be prudent for PWCO to agree to pay the costs of testing the Hills' well based on what we now know or to agree to pay the costs of connecting that well to the PWCo system. This does not mean, as I suspect you are looking to argue based on your repeated efforts, that PWCo is

unwilling or unable to serve, or that PWCo is ignoring and refusing to pursue viable water supplies. Rather, it proves that PWCo is proceeding prudently before spending capital that will be recovered from its ratepayers.

2. **Will you enter into a Wheeling Agreement?** I thought my explanation of the Wheeling Agreement in my letter was fairly simple:

Option 1. **A wheeling agreement.** Hill licenses the well to Hardcastle. Hardcastle draws a huge amount of water from the well. Hill draws a much smaller portion of that well through Hardcastle's pipes – which are already in place. Hill does not become a customer of Pine Water Company. He simply connects to the end of water main. This requires two meters – one at the well to measure your use of water and one at the end of the main to measure Hill's use of water. You pay for the pipe from the well to your tank. We pay for the pipe from the end of the main to Hill's land. PWCo nets about a million gallons a month. Your only cost is the initial hookup and a monthly power bill.

[JLS--That "only cost" could be several million dollars, could be something that should be paid by your clients in connection with the extension of service so they can develop, and could be necessary to deliver a less than viable water source. I am sure the Hills would like someone else to bear the cost of that interconnection, although one would think that they would have to obtain and supply the necessary hydrologic, engineering and economic data if they are going to "shop" their well. In any case, PWCo cannot even begin to evaluate whether such an interconnection is financially viable without knowing first the viability of the Hills' well. Paying to obtain that information based on what we know so far is not prudent, especially when we can easily obtain such information from the Hills in discovery if they file their threatened complaint. I suspect that Mr. Pugel's lawyer Mr. Gliege may now be able to confirm for you that ACC Staff has already sought such information from his clients.]

Unfortunately, you misinterpreted the proposal. You wrote:

It certainly follows that your apparent belief that PWCO must bear the risk of extending service to Hills' residential and commercial developments, or any other new development, is misguided.

I have never proposed that PWCO must bear the risk of extending service to Hill's property. Hill will gladly pay that cost. What he does not want to pay is the cost of extending pipes from the well to PWCO's tanks. If Hill is giving PWCO a net amount of free water I think even you would agree that Pine Water Company should pay the connection cost.

[JLS--Again, I am sure the Hills' would like PWCo's ratepayers to pay to connect their well to the PWCo system given the distinct possibility that such interconnection will be very costly and full of regulatory hurdles. However, PWCo cannot agree to fund the costs of interconnecting a well when the information it has evidences the the well is less than viable. Whether such water source will ever have a sufficiently sustainable supply to justify passing the costs of interconnection to ratepayers is unknown and will remain so until you and your clients provide current and credible information to support the claim of one million gallons a month.]

As I see it, there would be three reasons to refuse to enter into the Wheeling Agreement:

1. If the well will not produce enough water to justify the cost of connecting into your water system. Given the history of this well and the value of water in Pine, I think this is highly unlikely. However, it is possible. The only way we will know will be for Mr. Hardcastle to stick to his word and test this well.

[JLS--You have provided nothing to justify your claim of "highly unlikely" and the history of wells in Pine and my client's knowledge of this well in particular cast severe doubt on the validity of your claims. Of course, if your clients believe they this valuable resource to sell or exchange to further their development, they should be willing to spend the money to show that the claims of a viable,

sustainable yield of one million gallons a month are true. It is not prudent for PWCo to spend the money to prove or disprove your claims given the lack of information to support the claims.]

2. If the proposed Wheeling Agreement is not legal? Your lengthy letter tended to focus on the procedures and policies regarding a variance. You somewhat skirted around the issues regarding the procedures and laws regarding a Wheeling agreement. Again, this is a simple question. Is the proposed Wheeling Agreement legal or not? If it is not, I would like to call on your 14 years of utility experience. What Corporation Commission rule or Arizona statute or regulation would such a Wheeling Agreement violate, if any?

[JLS--I do not believe I ever said that such an agreement would be illegal. We have just made it clear that we do not have sufficient reason to believe it would be prudent and you and your clients seem more interested in obtaining a basis to argue that PWCo refuses to serve and/or that PWCo refuses to find additional water supplies than to seek scientific evidence to support your claims of excess water that can be used to serve PWCo's customers.]

3. If Mr. Hardcastle just does not want to do it. Even if it is legal. Even if it would provide more water to the citizens of Pine. Even if it would economically benefit Hardcastle.

[JLS-In truth, it would appear that it is the Hills that do not want to "do it" because you refuse to provide the information PWCo, a regulated public service corporation, needs to make a prudent decision to spend capital that will be recovered from ratepayers. I even understand Mr. Pugel has begun to develop this type of information with respect to his development. Ironically, this type of information is the minimum you will have to present to the ACC if you file a complaint or seek a variance. In short, the Hills' are not going to ever develop their property without obtaining such information]

recognize the possibility that clients do not always reach economically rational decisions. That is fine. This is America. There is no law that a person must be rational -- even if they own a water company.

There may be strategic reasons for which Mr. Hardcastle does not want water from Hill's well that are far beyond our knowledge or comprehension. If that is the case, just let me know. It will save us both the time of arguing and researching the legality of the well and the viability of the well. Mr. Hardcastle may not want to use Hill's well even if it would economically benefit him, even if it would benefit the citizens of Pine, and even if it is perfectly legal. He certainly has that option. However, it would save both you and me a lot of time if he would just come out and say it.

[JLS--I think it is well within your comprehension why PWCo is hesitant, reasons that include questions over the unsupported claim that the Hills' can provide one million gallons a month to PWCo as well as serious concerns over how and at what cost that water supply can be connected to PWCo's system. In other words, it would save your client a lot of money and time if you would simply provide some proof of what you claim rather than just making a claim and explaining to me why PWCo should prove or disprove it.]

Again Jay, we are looking for two simple answers. I will repeat the last line of my initial letter:

1. When is your client willing to look at this well and determine whether or not it is something that would help his water system?

[JLS-"when" is right after your client provides current and credible information from which PWCo can determine whether there is a water supply on the Hills' property that can be used to serve PWCo's customers in a economically viable manner. Your bare offer to provide a million gallons a water per month is insufficient.]

My second question focuses on a legal question:

2. What laws, regulations, or Corporate Commission regulations would our proposed Wheeling Agreement violate?

[JLS-I never said it was illegal that I recall.]

One final note. I never indicated that you were not a good attorney. I think you must be a very good attorney. You work for a very reputable law firm. You have a long list of utility clients. You certainly are a good attorney. However, as a good attorney, you should re-read my letter. I wrote that I would not be a good attorney if I recommended to Mr. Hill that he adopt your proposal. That sentence has nothing to do with your abilities.

[JLS--the intent there and throughout your letter is clear and I have recommended numerous such letters to clients because that is the way it is done. Indeed, I recommended such a letter here to PWCo as any extension agreement is a two-way street and that letter binds them as well. The fact is, you started this by making threats to bring another meritless claim to the ACC, we responded in a cooperative fashion and you and the Hills' do not like the process we are forced to follow either to sell or give water to PWCo in exchange for other considerations and/or to obtain an extension of service. Or, the Hills just want out. Either way, if "out of the box" as you propose means PWCo rushes out to spend money on testing and/or to agree to fund the cost of constructing and permitting unknown infrastructure based on what we now know, then "out of the box" is not prudent for a regulated water utility.]

Well, I suppose I am starting to defeat my goal of avoiding a letter war. Jay, I will never be able to match your experience in the utility field. I am simply a small town litigator who knows how to sway a jury on a good day. I recognize that some of my proposals and thinking on this matter may be "out of the box." That type of thinking may be frustrating to someone more familiar with the system. However, that may be what we need – some new approaches – to start solving some of Pine's water problems.

[JLS--you have our positions and I am confident they will be found reasonable at the ACC, albeit, it appears, only after a long and costly legal battle. Whether you force the agency to deal with the matter is your choice. As I said, we are ready to work with your clients if they are serious about either a wheeling or other arrangement or an extension of service. In this case, "serious" involves a more than your unsupported claims of a million gallons of excess water per month.

Very truly yours,

David W. Davis

For the Firm

www.fennemorecraig.com

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From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Saturday, November 11, 2006 3:27 PM
To: SHAPIRO, JAY
Subject: RE: Hardcastle

Jay, you said there was an email with an imbedded response. I don't find it.
Can you resend.
thx
David

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Tuesday, November 07, 2006 4:06 PM
To: David Davis
Subject: RE: Hardcastle

Would you like to discuss?

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Tuesday, November 07, 2006 4:02 PM
To: SHAPIRO, JAY
Subject: Hardcastle

November 7, 2006

via email

Jay L. Shapiro

Fennemore Craig, P.C.

3003 N. Central Ave., Suite 2600

Phoenix, Arizona 85012

RE: Hill v. Pine Water Company

Dear Jay:

I received your November 6, 2006 letter. We could engage in a letter writing war. However, I would rather not. I assume you are billing Mr. Hardcastle for your time. He then calculates his attorney fees as a factor when asking the corporation commission for a rate increase for the citizens of Pine. I certainly do not want to contribute to that increase unless it is absolutely necessary. So, let's make this simple. I have two questions:

1. **Will you agree to test the well?** On September 30, 2005 your client sent me an e-mail indicating the following:

That said, in the next week or so we'll be making arrangements for a 72 hour stress pump test to determine the actual water available. Thereafter, we can determine whether we both have a sufficient basis to proceed with this matter.

On October 4, 2005, I responded as follows: "Hill agrees to the well test. Hill wants to be present when the test starts."

I was under the impression that Mr. Hardcastle is a man of his word. He has agreed to test the well. However, your letter implies that he is no longer willing to test this well. In response to this question, I do not need four page letter. A few lines will do.

2. **Will you enter into a Wheeling Agreement?** I thought my explanation of the Wheeling Agreement in my letter was fairly simple:

Option 1. **A wheeling agreement.** Hill licenses the well to Hardcastle. Hardcastle draws a huge amount of water from the well. Hill draws a much smaller portion of that well through Hardcastle's pipes – which are already in place. Hill does not become a customer of Pine Water Company. He simply connects to the end of water main. This requires two meters – one at the well to measure your use of water and one at the end of the main to measure Hill's use of water. You pay for the pipe from the well to your tank. We pay for the pipe from the end of the main to Hill's land. PWCo nets about a million gallons a month. Your only cost is the initial hookup and a monthly power bill.

Unfortunately, you misinterpreted the proposal. You wrote:

It certainly follows that your apparent belief that PWCO must bear the risk of extending service to Hills' residential and commercial developments, or any other new development, is misguided.

I have never proposed that PWCO must bear the risk of extending service to Hill's property. Hill will gladly pay that cost. What he does not want to pay is the cost of extending pipes from the well to PWCO's tanks. If Hill is giving PWCO a net amount of free water I think even you would agree that Pine Water Company should pay the connection cost.

As I see it, there would be three reasons to refuse to enter into the Wheeling Agreement:

1. If the well will not produce enough water to justify the cost of connecting into your water system. Given the history of this well and the value of water in Pine, I think this is highly unlikely. However, it is possible. The only way we will know will be for Mr. Hardcastle to stick to his word and test this well.

2. If the proposed Wheeling Agreement is not legal? Your lengthy letter tended to focus on the procedures and policies regarding a variance. You somewhat skirted around the issues regarding the procedures and laws regarding a Wheeling Agreement. Again, this is a simple question. Is the proposed Wheeling Agreement legal or not? If it is not, I would like to call on your 14 years of utility experience. What Corporation Commission rule or Arizona statute or regulation would such a Wheeling Agreement violate, if any?

3. If Mr. Hardcastle just does not want to do it. Even if it is legal. Even if it would provide more water to the citizens of Pine. Even if it would economically benefit Hardcastle.

I recognize the possibility that clients do not always reach economically rational decisions. That is fine. This is America. There is no law that a person must be rational – even if they own a water company.

There may be strategic reasons for which Mr. Hardcastle does not want water from Hill's well that are far beyond our knowledge or comprehension. If that is the case, just let me know. It will save us both the time of arguing and researching the legality of the well and the viability of the well. Mr. Hardcastle may not want to use Hill's well even if it would economically benefit him, even if it would benefit the citizens of Pine, and even if it is perfectly legal. He certainly has that option. However, it would save both you and me a lot of time if he would just come out and say it.

Again Jay, we are looking for two simple answers. I will repeat the last line of my initial letter:

1. When is your client willing to look at this well and determine whether or not it is something that would help his water system?

My second question focuses on a legal question:

2. What laws, regulations, or Corporate Commission regulations would our proposed Wheeling Agreement violate?

One final note. I never indicated that you were not a good attorney. I think you must be a very good attorney. You work for a very reputable law firm. You have a long list of utility clients. You certainly are a good attorney. However, as a good attorney, you should re-read my letter. I wrote that I would not be a good attorney if I recommended to Mr. Hill that he adopt your proposal. That sentence has nothing to do with your abilities.

Well, I suppose I am starting to defeat my goal of avoiding a letter war. Jay, I will never be able to match your experience in the utility field. I am simply a small town litigator who knows how to sway a jury on a good day. I recognize that some of my proposals and thinking on this matter may be "out of the box." That type of thinking may be frustrating to someone more familiar with the system. However, that may be what we need – some new approaches – to start solving some of Pine's water problems.

Very truly yours,

David W. Davis

For the Firm

www.fennemorecraig.com

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David Davis

From: SHAPIRO, JAY [JSHAPIRO@FCLAW.COM]
Sent: Thursday, November 16, 2006 3:44 PM
To: David Davis
Subject: Pine Water Company

David--through two letters and two phone calls we have explained Pine Water's concerns and position clear. Let me try one more time:

If you clients want Pine Water to extend water utility service, have them execute the will serve letter and return it as instructed.

If your clients want to sell a water source to Pine Water, or exchange that water source for some other consideration, provide us independent, competent and current information about the productivity of that water source.

As of this time, we have nothing else to say.

Jay

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Thursday, November 16, 2006 10:32 AM
To: SHAPIRO, JAY
Subject: RE: Hardcastle

Jay L. Shapiro

Fennemore Craig, P.C.

3003 N. Central Ave., Suite 2600

Phoenix, Arizona 85012

RE: Hill v. Pine Water Company

Dear Jay:

Thank you for forwarding your e-mail. I do not know why I did not get it before. Let us cut to the chase.

1. Your client agreed in October 2005 to test Hill's well. You have a copy of that email. Your client has now reneged on that offer.
2. Your client does not think the well will produce anywhere near one million gallons a month. This impression is based upon his memory of the past performance of the well. He does not have any documents, he simply is going by memory. He does have our well test which showed over 40 gallons per minute, which at full time is 1.7 million gallons per month.

3. Your client thinks that the cost to connect Hill's well to your water system would be substantial. Your letter refers to "several million dollars." However, so far your client really has not done anything to estimate the cost to go from Hill's well to his tank or pipe or whatever the connection would be.

Based upon the above, I understand your position to be as follows:

Your client now wants Hill to test the well. You will make no commitment to Hill, even if the well tests fantastically. You do not have any idea how much it would cost to get the water from Hill's property to your system. You think it could be millions. You believe this is also a cost that must be paid by Hill.

If it will truly cost millions of dollars to connect Hill's well to your water system, then everyone should agree we should look for other solutions. Personally, I question that figure. I spoke with John Fought at ADOT. He tells me the right of way to go into the highway is free. That means your cost would be the connection to the well, a bore underneath the highway and connecting into your water system. I do not know where you would connect. The water line runs within 80 feet of the well. There is a tank - a huge tank, 40 feet in diameter - perhaps 100 yards away.

I do not know how your client would connect to his water system. He has the best information on that. I assume he also has the best information on how to go about making that connection in the most economical way.

One thing to consider, is your client's claim that the well did not produce sufficient water when they used it 8 or 10 years ago. This raises an interesting question. How did your clients connect the well to the water system several years ago without incurring millions of dollars in expenses? In essence if your client is being truthful, that this well was used in the past, and was subject to draw down, it had to be connected to Pine's water system. If it was connected before, why can it not be connected now?

I cannot imagine that it will cost a significant amount of money for your client to obtain a ballpark estimate of the cost to connect the well. In fact, I think he currently has two wheeling agreements and has had wheeling agreements in the past. In order to have a wheeling agreement, he needed to incur the expense of connecting an existing well to his water system. So, it is not like your client does not have any experience in estimating these costs.

I have some thoughts on moving forward.

1. My suggestion would be that you obtain a realistic estimate from your client regarding the cost to hook Hill's well to your system. Only you can do that. I cannot.

2. Research the procedures used in the other wheeling agreements. Has Pine Water required those well owners with current wheeling agreements to incur \$10,000.00 in well testing expenses before Pine Water would accept their water? If not, why would you demand of Hill when he is offering the water free?

Very truly yours,

David Davis

From: SHAPIRO, JAY [JSHAPIRO@FCLAW.COM]
Sent: Tuesday, March 13, 2007 8:41 AM
To: David Davis; jgliege@gliege.com
Cc: ktorrey@azcc.gov
Subject: RE: Pugel and ATM v Pine Water Company

David—you, John and all of your clients have our offer. In short, you have a choice—develop or litigate. I am not going to start debating these issues with you again via email as I recall all too well where that got us before. And based on your comment number 3, it appears you wish to proceed down that road again.

Jay

From: David Davis [mailto:ddavis@tsc-law.com]
Sent: Monday, March 12, 2007 10:18 PM
To: SHAPIRO, JAY; jgliege@gliege.com
Cc: ktorrey@azcc.gov
Subject: RE: Pugel and ATM v Pine Water Company

Dear Jay:

It is good to hear from you.
Some questions about your letter.

1. *"Frankly, I am not convinced the ACC would ever give its approval"*

How is this offer different from the Strawberry Hollow settlement?
Was the Strawberry Hollow settlement approved by the ACC?

2. *"There is simply too much at stake for the Company and its 2000 ratepayers for it to cease its defense."*

I don't understand how this settlement hurts the ratepayer.
Option A: If you settle the company gets \$20,500 and stops paying your bill.
Option B: If you litigate, then the company never gets the \$20,500 and must pay your bill all the way to the Supreme Court.
How is option B better for the ratepayer? I think the company expenses are higher under option B.

3. *"2. The parties immediately commence negotiation of extension agreements, wheeling agreements and/or any other agreements necessary for the development of their properties."*

Um, Jay, this sounds vaguely familiar to me . . . I just can't put my finger on it . . . maybe I'm thinking of another case.

David Davis

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Monday, March 12, 2007 4:11 PM
To: jgliege@gliege.com
Cc: David Davis; ktorrey@azcc.gov
Subject: RE: Pugel and ATM v Pine Water Company

Dear John--

The settlement offer you set forth in your email below is respectfully rejected. Frankly, I am not convinced the ACC would ever give its approval to property owners buying their way out of the CCN under the prevailing circumstances, even if we could come up with an argument that such a transaction was in the public interest. In sum, PWCo could never agree in concept to such a settlement.

We do, however, offer the following counter-offer.

1. While settlement discussions are pending all discovery and pre-filing deadlines for testimony be suspended.
2. The parties immediately commence negotiation of extension agreements, wheeling agreements and/or any other agreements necessary for the development of their properties.
3. Upon completion of such agreements, the parties will jointly seek ACC approval of such agreements and for variances to the moratoria imposed under Decision No. 67823, to the extent approval and variances are required.
4. PWCo will pay your clients fair market value for any water supplies shown to be available to PWCo to serve its existing ratepayers, above the amount of water necessary to serve their developments.
5. Pine Water will agree not to seek to recover its litigation costs to date as part of the cost of the extension of service.

Admittedly, with the exception of No. 5, this is little more than PWCO has been repeatedly offering since last summer. But perhaps your clients' views of their chances have changed, or they might simply wish to move forward with the development of their lands, rather than engage in years of litigation. Perhaps your clients have finally accepted that PWCo has no intention of allowing them out of the CC&N until forced to do so by a final, non-appealable order of an appellate court. There is simply too much at stake for the Company and its 2000 ratepayers for it to cease its defense. We can only hope that your clients consider this fact in assessing our renewed settlement offer.

Finally, please note that I have copied Mr. Torrey on this response. We believe all parties should be included in any substantive discussions of potential settlement. Should the parties reach an agreement without Staff, Staff will still have to take a position on the settlement when it comes time for the Commission to decide whether any required approvals will be granted. I also copied Mr. Davis.

Best Regards,

Jay

From: JOHN G. GLIEGE [mailto:jgliege@earthlink.net]
Sent: Monday, March 12, 2007 8:54 AM
To: SHAPIRO, JAY
Subject: Pugel and ATM v Pine Water Company

Jay

I have addressed the issue of settlement of the above captioned dispute with my clients and also with Mr. Davis on behalf of Mr. Hill. At this time we are prepared to offer the following as a Settlement of the foregoing disputes:

1. While settlement discussions are pending all discovery and pre-filing deadlines for testimony be suspended.
2. That the parties will pay Pine Water Company the following amounts in exchange for Pine Water Company deleting them from the Pine Water Company CC&N:

1. Pugel/Randall \$15,000.00
2. ATM \$ 4,300.00
3. Hill \$ 1,200.00

TOTAL PAYMENT TO PINE WATER COMPANY \$20,500. {Note that the amounts are based upon a value of the CC&N of \$100.00 per meter.}

3. Each party would be allowed to obtain water for its properties in whatever manner it chooses.
4. Each party pays its own attorney's fees and costs.
5. Hill agrees not to supply water from any source to anyone remaining within the Pine Water Company CC&N.
6. Pugel will entertain reasonable offers from Pine Water Company to sell to Pine Water Company excess water from his well.

If your clients are interested in pursuing a settlement on these terms please contact me by 3:00PM today.

Thanks.

Gliege Law Offices PLLC

John G. Gliege

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

928 380 0159

www.fennemorecraig.com

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Brooke Utilities
PO Box 9016
San Dimas, CA. 91706
Attn: Maria Villa

July 21, 2005

Dear Maria:

I am the owner of three parcels of land in Pine Arizona. None of these parcels currently have a water meter. I would like to have water to each parcel.

The first parcel is my home on a 12 acre site.
Physical Address 5521 W. Pine Haven Drive, Pine, AZ. 85544.
This parcel is outlined in Pink on the enclosed Survey Map.

The second parcel is a 20.3 acre site bordering Hwy 87.
This parcel is outlined in Yellow.

The third parcel is a 2.6 acre site bordering Hwy 87 and Bradshaw Road.
This parcel is outlined in Green.

Homes which adjoin my property on the North and West are currently being supplied with water by your company, so main water lines are very near.
Brooke Utilities is currently supplying water to a home which borders my 20.3 acre site (Yellow outlined) on the Northwest (Home location marked on the map).
Brooke Utilities is also currently supplying water to a home which borders my 2.6 acre site (Green outlined) on the West (Home location marked on the map).

Please notify me (preferably by return mail) when water service can be supplied to the parcels outlined on the map, and the costs of establishing the service.

Sincerely,

James Hill
PO Box 2246
Pine, AZ. 85544

PS. I can be reached at 928-474-9476 days, and 928-476-3261 evenings.

*****received return call from Dixie Bright 8/25/05, letter to be sent*****

Brooke Utilities
PO Box 9016
San Dimas, CA. 91706
Attn: Maria Villa

August 24, 2005

Copy: Arizona Corporation Commission
Utilities Division
1200 West Washington
Phoenix, AZ 85007-2996

Dear Maria,

On July 21, 2005 I talked with you by telephone and, per that conversation, I sent you a letter by mail which is copied below.

After receiving no response to my letter, I left phone messages on July 25 and July 28, asking you to respond. I left additional messages, on August 4, August 8, August 12, August 17, and August 22, asking you to return my calls.

On August 8 and August 22 I spoke to Customer Service Supervisor, Dixie Bright, who promised that I would be receiving your return call. In the August 22 conversation Dixie and I agreed that the call would come on the morning of Wednesday August 24th.

Again, no call was received.

You and Brooke Utilities have ignored my letter. You have also ignored the seven calls I have placed to you, and neither of the commitments Dixie Bright made to have you return my calls were honored.

In the span of one month I have gone from a complete supporter of Brooke Utilities to a frustrated homeowner forced to ask the Arizona Corporation Commission to step-in just to get you to return my letters and phone calls. I have never seen a worse example of customer service, and I certainly hope that this is not your normal operating procedure.

I am resending the original letter by Registered Mail and a copy of the original (and this follow-up) are going to the Arizona Corporation Commission attached to a complaint form. I am most unhappy with your total lack of response to my letter and phone calls, and I hope this registered letter will generate at least the courtesy of a response.

James Hill

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93360-2218
Customer Call Center • P.O. Box 9005 • San James, California 91773-9005 • (800) 270-6184

August 31, 2005

James Hill
PO Box 2246
Pine, AZ 85544

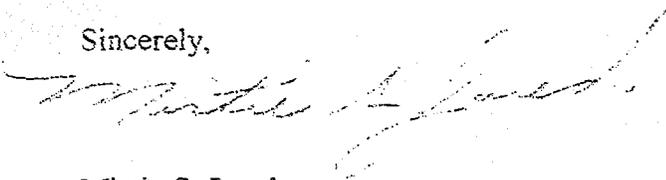
Re: Water Main Line Extension Request

Dear Mr. Hill,

Pursuant to your recent request, this correspondence confirms water main line extensions are prohibited within the service area of Pine Water Co., Inc. pursuant to Arizona Corporation Commission ("ACC") Decision Number 67823. Specifically, ACC Decision 67823 states, *"It is further ordered that a total moratorium on main extension agreements and commercial connections shall continue to be in effect in order to mitigate the potential detrimental effects associated with adding a significant number of customers and/or high volume users."*

Thank you for your inquiry,

Sincerely,



Mistie S. Jared
Operations Manager

SECOND SET OF DATA REQUESTS
FROM PINE WATER COMPANY
TO JAMES HILL AND SUSAN HILL
W-20511A-07-0100 and W-03512A-07-0100

April 4, 2007

- 2.1 In response to Company data request 1.10, the Hills claim that "*We proposed to PWC on numerous occasions that PWC enter into a wheeling agreement with complainants.*" Please provide copies of any and all correspondence or other documents evidencing the proposal of a wheeling agreement, including the terms and conditions of such proposed agreement.
- 2.2 Admit that it is the Hills' position that the Company should agree to extend service to properties that are not currently receiving water utility service from the Company before the Company is provided information regarding the amount of water that will be needed to serve the property.
- 2.3 Please explain the bases for the Hills claim, in response to data request 1.13 that water supplies from "*Central Arizona Project, Blue Ridge Reservoir, Pine Creek, existing wells, new wells*" are available to serve customers. In responding, please provide all documents in the Hills' possession evidencing such claims
- 2.4 Please identify all rules, regulations, orders or other laws that are inconsistent with the Company's October 2006 Will Serve letter to the Hills.
- 2.5 The Hills claim, in response to data request 1.13 that the Company agreed "*in writing*" to test the Hills' well. Please provide such "writing".
- 2.6 In responding to data request 1.14, the Hills claim that "*the Pugel plaintiffs offered a settlement to PWC under which Pugel's well owners would entertain reasonable offers from PWC for water from Pugel's prolific well. PWC's attorney flatly rejected such an offer, instead indicating his desire to take the matter all the way to the Arizona Supreme Court.*" Please provide all documents evidencing that such an offer was made.
- 2.7 Please provide all documentation evidencing the production and sustainable yield from the Pugel well referred to throughout the Hills responses to the Company's first set of data requests.
- 2.8 In responding to data request 1.15, the Hills claim that "*The fact that the previous owner of Hill's property asked on numerous occasions to have water meters provided to his commercial and residential property (which Hill now owns) is specific evidence that the company has failed to utilize its resources to develop water system within the CC&N to provide water to the such property.*" Please provide evidence, including written documentation, showing that the water service was requested on "numerous occasions."

**TURLEY SWAN CHILDERS
RIGHI & TORRENS, P.C.**

CHRIS H. BEGEMAN
CHRISTOPHER J. BORK
STEVEN M. CHAET
MICHAEL J. CHILDERS*
DAVID W. DAVIS
ELIZABETH SAVOINI FITCH
CRAIG S. GANZ†
SCOTT HUMBLE
MELISSA LIN
RICHARD L. RIGHI‡
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ARIZONA BOARD OF LEGAL SPECIALIZATION

†ADMITTED IN CALIFORNIA
‡ADMITTED IN OHIO
#ADMITTED IN COLORADO

April 10, 2007

Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012

RE: Pine Water Company

Dear Jay:

Please send me a ms word file for the 2nd request. I'll incorporate these answers.

2.1 Correspondence regarding the Wheeling Agreement would be between Jay Shapiro and David Davis. Attached are copies of those e-mails. H 63-70.

2.2 Deny, with clarification. Hill's lawsuit is not asking the company to extend service to Hill's property. If Hill were asking to become a Pine Water customer, then we agree that Hill would provide information regarding the expected amount of water that will be needed to serve the property. If Hill and Pine Water enter into a Wheeling Agreement, such a disclosure is irrelevant (projected use) if Hill is willing to limit his water use to 90% of the water being supplied to Pine Water Company through Hill's well.

2.3 As set forth in their response, Hill defers to plaintiff Pugel regarding Central Arizona Project, Blue Ridge Reservoir, and Pine Creek.

As explained in our answer to 1.13 there is one existing well that we know of (Hill's well) in which the company has not made reasonable efforts to enter into a Wheeling Agreement with Hill.

More recently, John Gliege, attorney for Pugel, has made an offer to Jay Shapiro under which Pugel would entertain offers for purchase of water from Pugel's well. The offer was rejected by Pine Water Company's attorney, Jay Shapiro. H 71-75.

2.4 James Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426, 671 P.2d 404 (1983).

- 2.5 See H52.
- 2.6 See H 71-75.
- 2.7 See H 76-79.
- 2.8 See H 44-45.

Very truly yours,

David W. Davis
For the Firm

DWD:be

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