

ORIGINAL



0000075315

1 GLIEGE LAW OFFICES, PLLC  
2 P.O. Box 1388  
3 Flagstaff, AZ 86002-1388  
4 (928) 226-8333

RECEIVED

320

2007 JUL 19 A 10:47

5 John G. Gliege (#003644)  
6 Stephanie J. Gliege (#022465)  
7 Attorneys for the Complainants

AZ CORP COMMISSION  
DOCKET CONTROL

8 BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. W-03512A-06-0407

DIRECT TESTIMONY OF EDWARD

MORIARITY

Arizona Corporation Commission  
DOCKETED

JUL 19 2007

DOCKETED BY 

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

DOCKET NO. W-03512A-06 -0613

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

DOCKET NO. W-03512A-07-0100

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

DOCKET NO. W-03512A-07-0019

7 1. State your name:

8 **Edward Michael Moriarity**

9 2. By who are you employed?

10 **Asset Trust Management Corp.**

11 3. Your employer is a complainant in this matter before the Arizona Corporation Commission?  
12 **YES**

13 4. ATM owns the property described in the complaint filed in this matter? **YES**

14 5. Does ATM intend to develop the property? **YES**

15 6. Is the property within the Certificate of Convenience and Necessity of Pine Water Company?  
16 **YES**

17 7. Did ATM request that Pine Water Company provide water service to the Property? **YES**

18 8. If so, what was the response of Pine Water Company?

19  
20  
21 **In a letter from Robert T. Hardcastle dated May 16, 2006: “ Unfortunately, the issuance of**  
22 **Arizona Corporation Commission decision number 67823 and other preceding orders prohibit**  
23 **Pine Water Company from providing water meters or a water main extension to the subject**  
24 **property. Specifically, the decision prohibits the extension of water mains within the service**  
25 **area. Since your development would require a water main extension, regardless of previously**  
26 **approved agreements, Pine Water Company cannot accommodate your request for water**  
27 **service at this time.” (Please note that the Eagle Glen subdivision had the necessary water**  
28 **main extension for the total project of 57 town homes installed in 1985 in order to receive the**  
29 **water service for the existing first phase of 14 town homes).**

9. Is the letter attached to the complaint denying ATM service the letter ATM received from Pine Water Company?

1  
2 **YES, six letter images are contained in the documents produced that record the water meter**  
3 **request exchange between ATM and Robert Hardcastle.**

4 **10. In order to develop the property and for people to use and enjoy the property is it required to have**  
5 **domestic water service to the property? YES**

6 **11. Because Pine Water Company was not able to provide ATM with water at a reasonable rate,**  
7 **what steps has ATM taken to acquire water for the property?**

8 **ATM has located water that can be purchased and supplied to the property in question (Eagle**  
9 **Glen Town homes).**

10 **12. When ATM acquired the property was there already in place a development plan for the**  
11 **property? YES**

12 **13. Was there already in place an agreement with Pine Water Company to provide adequate water**  
13 **service to the property at a reasonable rate? YES**

14 **14. Did Pine Water Company ever provide you with a "will serve" letter indicating a willingness to**  
15 **provide water service to the property? NO**

16 **15. How many residential units are you planning on constructing on the property?**

17 **ATM and NEWCOR Development, LLC will be completing the 1985 Gila County approved**  
18 **plat for the final phase of the Eagle Glen town home project that consists of 43 townhouses for**  
19 **a total of 57 townhouses (there are currently 14 existing town homes in the completed first**  
20 **phase).**

21 **16. Other than these residential units are you planning on constructing any other improvements on**  
22 **your property?**

23 **There is no plan for additional construction involving water meters beyond the 43 mentioned**  
24 **above.**

25 **17. Since you were not able to arrange for domestic water service from Pine Water Company for**  
26 **your 43 units on the property, what alternative did you take?**

27 **ATM entered into an "Option to Purchase Water" agreement with SH3 LLC.**

28 **18. Do you believe that the well, known as SH3, has sufficient water to provide service to your 43**  
29 **residential units? YES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

19. What is the basis for this belief?

The SH3 well has been deemed a 100 year adequacy water supply by ADWQ and this well has also had a solid history of surplus water in amounts well beyond the need required for the 43 new water meters.

1 Original and 19 copies mailed/delivered  
This 17<sup>th</sup> day of July, 2007 to:

2 Arizona Corporation Commission  
3 Attn: Docket Control  
4 1200 W. Washington  
Phoenix, AZ 85007

5 Copies of the foregoing mailed/delivered  
6 This 17<sup>th</sup> day of July, 2007 to:

7 Kevin O. Torrey  
8 Attorney, Legal Division  
9 Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007  
[ktorrey@azcc.gov](mailto:ktorrey@azcc.gov)

10 Christopher Kempley, Chief Counsel  
11 Legal Division  
12 Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

13 Ernest G. Johnson, Director  
14 Utilities Division  
15 Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

16 Jay L. Shapiro  
17 Fennemore Craig  
18 3003 North Central Ave. Ste 2600  
19 Phoenix, AZ 85012-2913  
[JSHAPIRO@fclaw.com](mailto:JSHAPIRO@fclaw.com)

20 David W. Davis, ESQ.  
21 Turley, Swan & Childers, P.C.  
3101 N. Central, Suite 1300  
Phoenix, AZ 85012-2643  
[ddavis@tsc-law.com](mailto:ddavis@tsc-law.com)

23 Robert M. Cassaro  
24 PO Box 1522  
Pine, AZ 85544

25 William F. Haney  
26 3018 E. Mallory St.  
Mesa, AZ 85213

27 Barbara Hall  
28 PO Box 2198  
Pine, AZ 85544



**ASSET TRUST MANAGEMENT**  
**7729 E Greenway Rd., Suite 500**  
**Scottsdale, AZ 85260**  
**480-882-0800 Fax 480-882-0808**

---

To: Mr. Robert Hardcastle, President of Brooke Utilities

From: Mr. Curt Cluff, President of Asset Trust Management

Date: May 1, 2006

Rem: Water Service to existing Eagle Glen lots, Pine Arizona  
**Follow up of the letter sent April 13, 2006 - Includes ACC Docket # W-03512A-03-0279**

Sir,

I am again requesting (letter sent April 13, 2006) new water service to forty three (43) existing lots in the Eagle Glen subdivision located in Pine Arizona. This is to allow for the construction of new single-family units.

I am familiar with the water situation in the Pine area and realize that getting water service there is not an easy task. I am also aware that new water service installations have occurred in recent years in the area. Even so, Eagle Glen does have a twenty-year, standing agreement for water service.

In 1985 the E & R Water Co. received approval from the Arizona Corporation Commission of the "Agreement Relating to Extension of Water Distribution Facility (Non-Refundable)" and the "Grant in Aid Agreement (Non-Refundable)" which was executed by Eagle Glen Development Company and E & R Water Company, Inc.

This action enabled the Water Company to provide an ample supply of potable water for domestic use to each and every lot on demand without exception.

The active status of the above agreement to supply water was re-affirmed in February 18, 1994 when the Subdivision Public Report for Eagle Glen was filed with the State of Arizona.

There are 43 approved condominiums in this final phase of the original plan, it is my intention to begin building at this time.

Thank you,

Cc: Arizona Corporation Commission - Docket # W-03512A-03-0279 - Pine Water Company Inc.

# **Brooke Utilities, Inc.**

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

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

May 10, 2006

**VIA FACSIMILE TO (480) 882-0808**

Curt Cluff  
Asset Trust Management  
7729 E. Greenway Rd., Suite 500  
Scottsdale, AZ 85260

Re: **Eagle Glen Project, Pine, AZ; Pine Water Co. ACC Complaint 2006-51194**

Dear Mr. Cluff,

In reviewing your above referenced complaint filed with the Arizona Corporation Commission on April 18, 2006, and in the preparation of our answer, it is appropriate for us to understand your ownership or business relationship with Eagle Glen. I note your official capacity with Asset Trust Management but you have not identified your relationship with this project as owner, developer, consultant or other capacity. Since such complaints are brought by property owners and you are not recognized as an intervener in Docket No. W-03512A-03-0279 it is necessary that I make this inquiry.

We are prepared to timely answer this complaint subject to your further advice as indicated herein. Please reply in writing to this inquiry at your earliest convenience.

Sincerely,



Robert T. Hardcastle  
President

cc: FTH correspondence file  
MI  
Brad Morton, ACC



**ASSET TRUST MANAGEMENT**  
**7729 E Greenway Rd., Suite 500**  
**Scottsdale, AZ 85260**  
**480-882-0800 Fax 480-882-0808**

---

To: Mr. Robert Hardcastle, President of Brooke Utilities  
From: Mr. Curt Cluff, President of Asset Trust Management  
Date: May 11, 2006  
Rem: Water Service to existing Eagle Glen lots, Pine Arizona  
ACC Docket # W-03512A-03-0279  
ACC Complaint 2006-51194

Sir,

In response to your letter dated May 10, 2006 concerning the relationship that ATM has to the Eagle Glen property; ATM is the sole owner of the remaining 43 lots that need water service and as the president, I represent the interests of ATM.

Mr. Hardcastle, if you will check your file on Eagle Glen you will find that I have requested meters for Eagle Glen starting in 1998.

I hope that I can now plan on receiving the 43 meters and begin building the remaining condos.

Thank you,

Cc: Arizona Corporation Commission - Docket # W-03512A-03-0279 - Pine Water Company Inc.  
- Complaint 2006-51194

# **Brooke Utilities, Inc.**

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

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

May 16, 2006

Curt Cluff  
Asset Trust Management  
7729 E. Greenway Rd., Suite 500  
Scottsdale, AZ 85260

Re: **Eagle Glen Project, Pine, AZ; Pine Water Co. ACC Complaint 2006-51194**

Dear Mr. Cluff,

Thank you for your written ownership clarification dated May 11. Unfortunately, the issuance of Arizona Corporation Commission Decision No. 67823 and other preceding Orders prohibit Pine Water Co. ("PWCo.") from providing water meters or a water main extension to the subject property. Specifically, the Decision prohibits the extension of water mains within the service area (see ACC Decision No. 67823, page 13, at lines 14-16 attached hereto). Since your development would require a water main extension, regardless of previously approved agreements, PWCo. cannot accommodate your request for water service at this time.

Alternatively, you may want to consider filing an application for a variance from this Decision on behalf of your project.

Sincerely,



Robert T. Hardcastle  
President

Attachments: ACC Decision No. 67823

cc: RTH correspondence file  
MJ  
Brad Morton, ACC

**ATM**

**ASSET TRUST MANAGEMENT**  
**7729 E Greenway Rd., Suite 500**  
**Scottsdale, AZ 85260**  
**480-882-0800 Fax 480-882-0808**

---

To: Mr. Robert Hardcastle, President of Brooke Utilities  
From: Mr. Ed Moriarity, Vice-president of Asset Trust Management  
Date: July 11, 2006  
Rem: Water Service to existing Eagle Glen lots, Pine Arizona  
ACC Docket # W-03512A-03-0279

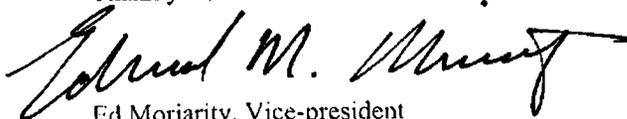
Sir,

Let me introduce myself, my name is Ed Moriarity the Vice-president of Asset Trust Management (ATM). Mr. Curt Cluff has given me the responsibility of acquiring the 43 water meters needed for new condos in the Eagle Glen subdivision locate on Hardscrabble Road in Pine, Arizona. As you are aware, Mr. Cluff and ATM have a history of petitioning Brooke Utilities – The Pine Water Company (PWCo.), for meter service dating back to 1996. We received your letter (dated May 16, 2006) stating that the Pine Water Co. cannot provide water for our request due to the Arizona Corporation Commission (ACC) decision No. 67823.

Since the PWCo. is no longer able to fulfill their contract under the Certificate of Convenience & Necessity (CC&N) granted by the ACC to "provide water", the water service that we need in order to exercise our property right to build our Gila County approved condos, I have found another source of water for the Eagle Glen subdivision.

Please remove the planned Eagle Glen 43 condos from the PWCo. Certificate of Convenience & Necessity (CC&N) granted by the ACC to "provide water".

Thank you,



Ed Moriarity, Vice-president  
Asset Trust Management  
7729 E. Greenway Rd. Ste. 500  
Scottsdale, AZ 85260  
480-882-0803 (Off)

Cc: Arizona Corporation Commission - Docket # W-03512A-03-0279 - Pine Water Company Inc.

# **Brooke Utilities, Inc.**

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

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

July 13, 2006

Edward Moriarity  
Asset Trust management  
7729 E. Greenway Rd., Suite 500  
Scottsdale, AZ 85260

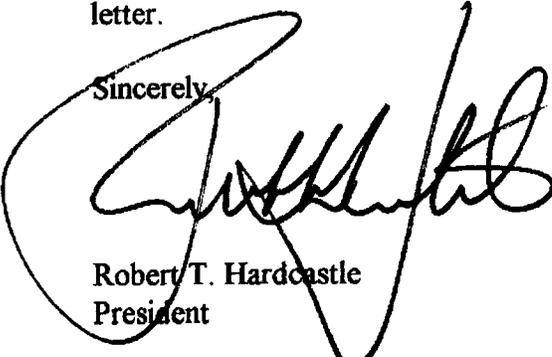
Re: **Proposed Eagle Glen Subdivision, Pine, AZ; Pine Water Co. ACC Docket  
No. W-03512A-03-0279**

Dear Mr. Moriarity,

Thank you for your correspondence dated July 11, 2006. However, your solution to this problem is unacceptable and violates Pine Water Co.'s exclusive right to serve water utilities within its certificated area. Any other public supplier of water in this regard would be in violation of numerous Arizona statutes and regulations. It appears that you are misinformed as to the regulatory process related to service area deletion. Therefore, your request cannot be accommodated.

In that regard, Brooke Utilities, Inc. will aggressively move to enforce its rights throughout the service areas of all of its water subsidiaries including those referenced in your letter.

Sincerely,



Robert T. Hardcastle  
President

cc:

RTH correspondence file  
MJ, SS, MB  
JS, Esq.  
ACC Docket No. W-03512A-03-0279