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2007 SEP 26 P 4: 36

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
SEP 26 2007

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PINE WATER COMPANY FOR
APPROVAL TO (1) ENCUMBER A PART
OF ITS PLANT AND SYSTEM
PURSUANT TO A.R.S. § 40-285(A); AND
(2) ISSUE EVIDENCE OF
INDEBTEDNESS PURSUANT TO A.R.S.
§ 40-302(A).

DOCKET NO: W-03512A-07-0362
RESPONSE TO STAFF REPORT

In accordance with the Procedural Order dated September 14, 2007, Applicant Pine Water Company ("PWCo") hereby files this Response to the Staff Report dated September 7, 2007. In substance, PWCo and Staff are in agreement that the approvals sought in this docket are in the public interest and should be granted. Therefore, PWCo makes this filing to clarify certain matters in response to the Staff Report. In short, the K2 transaction is not a "loan".

PWCo and the District have entered into a Joint Well Development Agreement "to drill and equip a deep well capable of producing a sustainable yield of no less than 150 gallons per minute ("gpm") on a portion of the K2 site and to interconnect the well to Pine Water's system ("K2 Well Project"). Staff Report at 2. The K2 Well Project is to include a fully equipped and interconnected production well and additional water storage. Staff Report at 4. PWCo has agreed to invest \$1 million in the K2 Well Project. The District has agreed to invest \$300,000 of capital in the K2 Well Project, the estimated cost to drill

1 a test well at the site. Staff Report at 2. *Id.* In the event the K2 Well Project is
2 successful, PWCo has agreed to return the District's capital investment with a 6% return
3 thereon. Staff mischaracterizes this as a "loan." Staff Report at 2, 5.

4 The K2 transaction is not a loan. "The District will provide the \$300,000 as up-
5 front capital to finance the cost of drilling the test well." Staff Report at 2. The District is
6 investing capital to develop a well, including the cost of drilling a test well. If the
7 investment is successful, PWCo will provide the District with a return on and of that
8 investment. The investment will be deemed successful if the K2 well has a sustainable
9 yield of 150 gpm as defined in the Agreement and following entry of an ACC Decision
10 recognizing the Project as used and useful and included in rate base for rate making
11 purposes. If the K2 well is not interconnected to the PWCo water distribution system,
12 PWCo will offer to convey title to the Project to the District at no cost to the District.
13 PWCo respectfully submits that Staff is wrong in characterizing the transaction as a
14 "loan."

15 The error is understandable. In an abundance of caution, PWCo sought
16 Commission approval under ARS § 40-302 which requires approval of "indebtedness."
17 Nevertheless, PWCo's contingent obligation to return the District's investment is not a
18 loan. Nor is the lien, approval of which is also sought in this docket, security for a loan.
19 Rather, the lien secures PWCo's performance according to the terms and conditions of the
20 parties' agreement.

21 Again, Staff and PWCo are in general agreement as to the relief that should be
22 granted in the public interest in this docket. However, in light of the foregoing discussion,
23 PWCo respectfully requests that Staff's first, second and fourth recommendations (Staff
24 Report at 4-5) be amended to more accurately read:

25 "Staff recommends that the Commission authorize PWCo to issue
26 evidence of a contingent indebtedness to the District in the amount of

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\$300,000, together with a 6% per annum return thereon, for the purposes described herein.”

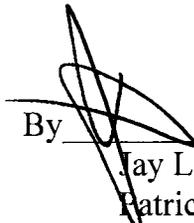
“Staff recommends that the Commission authorize Pine Water’s request to encumber its assets related to the K2 Well Project in an amount not to exceed \$300,000.”

“Staff further recommends that one copy of the executed Joint Well Development Agreement, the Notice of Continuing Security and Lien, and any other document evidencing PWCo’s indebtedness or encumbrance of a part of its plant or system related to the K2 Well Project be filed with Docket Control within 60 days of execution.”

This will help ensure that the terms “loan,” “borrow” and “borrowing” not be utilized by the Commission to characterize the K2 transaction, which is necessary and appropriate because no “loan” or “borrowing” is involved in the K2 is transaction.

DATED this 26th day of September, 2007.

FENNEMORE CRAIG, P.C.

By  _____
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ORIGINAL and thirteen (13) copies of the foregoing filed this 26th day of September, 2007:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

1 **COPY** of the foregoing hand-delivered
2 this 26th day of September, 2007 to:

3 Mr. Dwight D. Nodes
4 Assistant Chief Administrative Law Judge
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007

8 Mr. Kevin Torrey, Esq.
9 Legal Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 **COPY** of the foregoing mailed
14 this 26th day of September, 2007 to:

15 Mr. Michael J. Harper
16 Rensch Walker & Harper PC
17 111 W. Cedar Lane, Suite C
18 Payson, Arizona 85541

19 By: Maria San Jose
20 1975886.1/75206.015