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 Attorneys for Pine Water Company

2008 MAR -3 P 3:07
 AZ CORP COMMISSION
 DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: W-03512A-07-0362

**NOTICE OF FILING LATE FILED
EXHIBIT**

13 Pine Water Company hereby submits this Notice of Filing Late Filed Exhibit in the
 14 above-referenced matter. Attached hereto is a fully executed copy of the Escrow
 15 Instructions dated February 8, 2008 (*see Exhibit 1*) relating to the Joint Well Development
 16 Agreement dated May 1, 2007, as amended. A copy of the Escrow Instructions was
 17 previously submitted by Interveners as an attachment to their Closing Brief dated
 18 February 15, 2008. However, the copy filed by Interveners was unexecuted and the
 19 Company is submitting a fully executed copy to complete the record. PWCo has no
 20 objection to this document being admitted as an Exhibit.

DATED this 3rd day of March, 2008.

Arizona Corporation Commission
DOCKETED

MAR 3 2008

DOCKETED BY

FENNEMORE CRAIG, P.C.

By

Jay L. Shapiro
 Patrick J. Black
 3003 North Central Avenue, Suite 2600
 Phoenix, Arizona 85012
 Attorneys for Pine Water Company

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ORIGINAL and thirteen (13) copies of the foregoing filed this 3rd day of March, 2008:

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

COPY of the foregoing hand-delivered this 3rd day of March, 2008:

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

Mr. Kevin Torrey, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing **emailed** this 3rd day of March, 2008 to:

jgliege@earthlink.net;
jgliege@gliege.com
John G. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

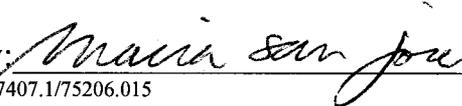
By: 
2037407.1/75206.015

Exhibit 1

ESCROW INSTRUCTIONS
(Joint Well JDWA)
(K2 Site)

THESE ESCROW INSTRUCTIONS ("Instructions") are entered into this 8th day of February 2008 ("Effective Date"), by and between Pine Water Company ("PWCo"), Pine-Strawberry Water Improvement District ("PSWID"), and Pioneer Funding Services, a division of Pioneer Title Agency, Inc. ("Escrow Agent").

RECITALS:

A. PWCo and PSWID have entered into that certain Joint Well Development Agreement dated May 1, 2007 (as amended, the "JDWA"). Pursuant to the JDWA, PWCo and PSWID agreed to a sequential development of a well site located in eastern Strawberry, Arizona, just south of Strawberry Creek, as more particularly described in the JDWA (the "Project").

B. Under Section 4 of the JDWA, PSWID has agreed to provide \$300,000 (the "PSWID Funds") to develop a test well and establish the sustainable yield, in accordance with the JDWA.

C. PWCo and PSWID desire to establish an escrow for the deposit of the PSWID Funds and to create a mechanism to govern the disbursement of PSWID Funds to pay contractors for their work on certain aspects of the Project.

D. Escrow Agent is willing to act as escrow agent for the PSWID Funds and to carry out its responsibilities hereunder.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties agree as follows:

1. PSWID Funds.

(a) PSWID (i) having been notified in writing by PWCo that funding for the Project is available upon terms and conditions acceptable to PWCo, (ii) having been notified in writing by PWCo that title to the well site for the Project has been conveyed to PWCo, including easements within the well site for ingress, egress, maintenance, repair and replacement, (iii) having received from PWCo the executed Notice of Continuing Security Interest and Lien in favor of PSWID, expressly subject to any adverse final non-appealable decision of the Arizona Corporation Commission or court of law that the Continuing Security Interest and Lien is void and unenforceable, (iv) having received and approved the Project Plan and Project Budget submitted in writing by PWCo, and (v) having waived receipt of ACC approvals and recordation of the Notice of Continuing Security Interest and Lien as a precondition of depositing PSWID Funds with Escrow Agent, shall, within ten (10) days of its receipt of an executed original of these Instructions, deposit the PSWID Funds (\$300,000.00) with Escrow Agent.

(b) Escrow Agent shall invest all cash funds delivered and retained by Escrow Agent in one or more interest bearing account(s), with one or more federally insured banks with offices in Payson, Arizona satisfactory to PWCo and Escrow Agent. All interest earned on such sums shall be considered part of the PSWID Funds.

2. Disbursement of Escrowed Funds.

(a) Escrow Agent shall disburse the PSWID Funds upon written application in accordance with this Section 2 to pay for work performed pursuant to the JDWA. Escrow Agent shall not make any disbursements from the PSWID Funds for any purpose other than the following:

- (i) to pay a consultant hired by PSWID to coordinate and facilitate the design, construction, testing, and equipping of the test well in accordance with the JDWA;
- (ii) to pay a well driller hired by PWCo to drill, case, equip and test the test well in accordance with the JDWA;
- (iii) to pay material suppliers hired by PWCo for materials associated with the drilling, equipping and testing the test well in accordance with the JDWA;
- (iv) to pay a hydrologist hired by PWCo to make recommendations regarding the test well and regarding testing and to review and analyze test data in accordance with the JDWA;
- (v) to pay other contractors and suppliers hired by PWCo or PSWID to test, construct, and equip the test well in accordance with the JDWA;
- (vi) to return surplus funds to PSWID in accordance with Section 3, below;
- (vii) payment of fees and expenses in accordance with Section 4, below.

and then, for disbursements allowed under subsections (i) through (v) above, only after satisfaction of the conditions set forth below in this Section 2.

(b) The Escrow Agent shall be provided a written draw request (the "Draw Request") executed by the representatives of PWCo and PSWID designated under the JDWA at least three (3) business days before the date funds are to be disbursed. The Draw Request shall include the following:

- (i) A statement that in soliciting and contracting with the contractor the procedures and requirements set forth in Title 34, Chapters 2 and 3, Arizona Revised Statute have been applied and satisfied as if PSWID had contracted directly for the work or materials.
- (ii) Invoices and corresponding applications for payment of contractors, subcontractors and material suppliers stating in reasonable detail the

respective work performed or the materials supplied in connection with the Project or, if payment to the contractor, subcontractor or material supplier will be made in advance, invoices and corresponding applications for payment stating in reasonable detail the respective work to be performed or the materials to be supplied in connection with the Project;

- (iii) Statements of the amount due and payable to each such contractor, subcontractor and material supplier;
- (iv) Conditional lien waivers from all such contractors, subcontractors and material suppliers identified in any such invoices in a form complying with applicable law;
- (v) Unconditional lien waivers from all such contractors, subcontractors and material suppliers identified in any such invoices in form complying with applicable law for work performed and material supplied for which payment has been made in response to a previous invoice;
- (vi) Unconditional lien waivers in a form complying with applicable law upon request for final payment to the contractor, subcontractor or material supplier;
- (vii) An authorization for disbursement to Escrow Agent signed by PWCo or its authorized agent and by PSWID or its authorized agent stating (a) that the amounts requested for payment in the Draw Request are due and payable to the contractors, subcontractors and material suppliers and are for services and materials set forth in Section 2(a) above; and (b) that PWCo and PSWID jointly request the disbursement of the amounts stated in the Draw Request to the specified contractors, subcontractors and material suppliers.

(c) Upon Escrow Agent's receipt of the Draw Request and authorization to disburse signed by or on behalf of PWCo and PSWID, Escrow Agent shall disburse the funds requested in the Draw Request from the PSWID Funds. All checks shall be made payable to the contractor, subcontractor or material supplier to whom payment is due for work performed as set forth in the Draw Request. In no event shall any check be made payable directly to PWCo.

3. Delivery of Surplus Funds to PSWID. In the event the Project or the JDWA is terminated for any reason, or if PWCO has not contracted with a well driller to drill the test well by the later of March 1, 2008 or that date indicated and approved on the Project Plan, as it may be amended from time to time, or if the drilling of the test well is not commenced by the later of April 30, 2008 or that date indicated and approved on the Project Plan, as it may be amended from time to time, the parties shall notify Escrow Agent of such termination or inaction. Upon delivery of notice of such termination or inaction, no further draws shall be made on the PSWID Funds, and Escrow Agent immediately shall disburse the remaining PSWID Funds to PSWID.

4. Escrow Fees and Expenses. The fees and expenses associated with establishing and maintaining the escrow pursuant to these Instructions shall be paid to Escrow Agent out of the

PSWID Funds in accordance with the Schedule of Escrow Fees set forth on Exhibit "A" attached hereto.

5. Escrow Agent's Duties. Escrow Agent hereby accepts the duties imposed upon it by these Instructions, represents that it is fully empowered under any applicable laws and regulations to accept such duties, and agrees to perform such duties, but only upon and subject to the express terms and conditions set forth below:

(a) Escrow Agent shall be entitled to advice of counsel of its choosing concerning any controversy which may arise hereunder and Escrow Agent may pay reasonable compensation to all attorneys retained by it in such matters. Escrow Agent shall not be responsible for any loss or damage resulting from any action taken in good faith in reliance upon the opinion or advice of counsel.

(b) Escrow Agent shall incur no liability in acting upon any notice, request, consent, waiver, certificate, statement, opinion or other document which it shall reasonably believe to be genuine and to have been signed by the proper person and to have been prepared and furnished in connection with any of the provisions of these Instructions, and Escrow Agent shall be under no duty to make any investigation or inquiry as to any statement contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements.

(c) All monies held by Escrow Agent pursuant to these Instructions shall, until applied as herein provided, be held in trust for the purposes for which they were received and shall be segregated from other funds. PWCo and/or PSWID shall provide such documentation as may reasonably be requested by Escrow Agent to authorize the investment of funds held by Escrow Agent pursuant to these Instructions.

(d) No provision of these Instructions shall be construed to relieve Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct.

6. Resignation by Escrow Agent. Escrow Agent may at any time resign by giving at least thirty (30) days' written notice to the PWCo and PSWID. Escrow Agent's resignation shall become effective on the earlier of (i) the date stated in the resignation given pursuant to the preceding sentence; or (ii) the date on which a successor Escrow Agent appointed and accepts the duties of Escrow Agent. In case Escrow Agent shall resign pursuant to this section, or otherwise become incapable of acting hereunder, an independent successor shall be appointed jointly by PWCo and PSWID.

7. Requests of Accounting. Upon request by PWCo or PSWID, a copy of Escrow Agent's record of accounting for funds received and disbursed, on Escrow Agent's form, shall be furnished to the requesting party.

8. Notices.

(a) Any notice, approval, consent or other communication required or permitted to be given to a Party must be in writing and delivered in person, or by reputable nationwide overnight

courier (e.g., Federal Express), or given by facsimile transmission, or forwarded by certified or registered mail, postage pre-paid, return receipt requested, at the address indicated below, unless the Party giving such notice has been notified, in writing, of a change of address:

PWCo:

Brooke Utilities, Inc.
Attention: Robert T. Hardcastle, President
3101 State Road
Bakersfield, CA 93308
Telephone: (661) 633-7526
Facsimile: (800) 748-6981
email: rth@brookeutilities.com

With a copy to:

Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone: (602) 916-5366
Facsimile: (602) 916-5566
Email: jshapiro@fclaw.com

PSWID:

Pine Strawberry Water Improvement District
Attention: Gary Sherlock, Chairman
P.O. Box 134 Pine, Arizona
H- 928-476-3560
C- 602-989-1942
rgse@earthlink.net

With a copy to:

William P. Sullivan, Esq.
Curtis, Goodwin, Sullivan, Udall & Schwab
501 East Thomas Road
Phoenix, AZ 85006-1003
Telephone: (602) 393-1700
Facsimile: (602) 393-1703
Email: wsullivan@cgsuslaw.com

Escrow Agent:

**Pioneer Funding Services
Attention: Richard L. Gann
14500 N. Northsight Blvd., Suite 112
Scottsdale, AZ 85260
Telephone: (480) 607-7308, Ext. #205
Facsimile: (480) 607-7284 or (866) 530-8589
Email: Rich.Gann@PTAAZ.com**

- (b) Notices shall be effective in accordance with the following:
- (i) On the earliest of date of delivery (or refusal to accept delivery) if notice is given by personal delivery or facsimile transmission with evidence of error-free transmission prior to 5:00 p.m., Arizona time;
 - (ii) On a business day (or the next succeeding business day if given after 5:00 p.m., Arizona time or on a Saturday, Sunday or federal or Arizona state holiday);
 - (iii) On the next succeeding business day after deposit with an overnight courier for next day delivery; or
 - (iv) If notice is sent through the United States mail, on the earlier of the date of actual delivery as shown by the addressee's receipt or the expiration of three (3) days following the date of mailing.

9. Miscellaneous Provisions.

(a) Attorneys' Fees. If any party is in default hereunder, the defaulting party shall pay for other party's reasonable attorneys' fees, expert witness fees, deposition and trial transcript costs and cost of court and other similar costs or fees paid or incurred by the other party by reason of or in connection with the default (whether or not legal or other proceedings are instituted).

(b) Entire Agreement. These Instructions constitutes the entire agreement between the parties hereto pertaining to the retention and disbursement of the PSWID Funds. No change or addition is to be made to these Instructions except by written amendment executed by the parties hereto.

(c) Successors and Assigns. These Instructions shall inure to the benefit of, and be binding upon, the parties hereto and their successors-in-interest and permitted assigns.

(d) No Third Party Beneficiary. These Instructions is intended solely for the benefit of PWCo and PSWID. No third party will have any rights or interest in any provision of these Instructions or the PSWID Funds.

(e) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the PSWID or PWCo of the breach of any covenant of these Instructions shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of these Instructions.

(f) Severability. If any provision of these Instructions shall be determined by a court to be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

(g) Multiple Counterparts. These Instructions may be executed in multiple counterparts, each of which shall be an original and all of which combined shall constitute one and the same instrument.

(h) Authorized Signatures. The individuals executing and acknowledging these Instructions on behalf of the respective parties are authorized to do so and, upon their execution and acknowledgement, these Instructions shall be binding and enforceable upon the respective parties in accordance with its terms and provisions.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed these Instructions as of the date first set forth above.

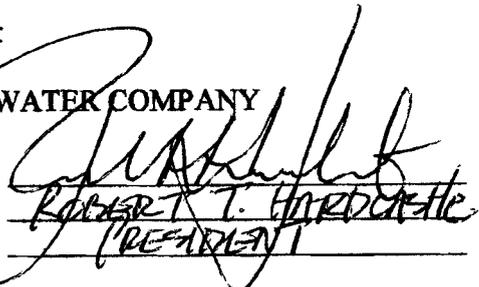
PWCo:

PINE WATER COMPANY

By:

Name:

Title:


ROBERT T. HARDCASTLE
PRESIDENT

PSWID:

PINE-STRAWBERRY WATER
IMPROVEMENT DISTRICT

By: _____

Name: _____

Title: _____

ESCROW AGENT:

ACCEPTED AND AGREED TO:

PIONEER TITLE AGENCY, INC., an
Arizona corporation

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed these Instructions as of the date first set forth above.

PWCo:

PINE WATER COMPANY

By: _____
Name: _____
Title: _____

PSWID:

PINE-STRAWBERRY WATER
IMPROVEMENT DISTRICT

By: Wesley E. Suar
Name: WESLEY E. SUAR
Title: DELEGATE FOR WATER DEVELOPMENT

ESCROW AGENT:

ACCEPTED AND AGREED TO:

PIONEER TITLE AGENCY, INC., an
Arizona corporation

By: Richard Gann
Name: Richard Gann
Title: PRESIDENT

Pioneer Funding Services

Schedule of Escrow Fees and Expenses

A service fee in the amount of \$350.00 shall be due Escrow Agent upon the execution of this Escrow Instruction. This fee represents the total cost for the escrow services described herein including up to one disbursed check or wire. In the event additional disbursements are required by the parties, Escrow Agent shall be due an additional service fee in the amount of \$15.00 per each additional check or wire disbursed.