

ORIGINAL



0000081192

322

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

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

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B. PUGEL, husband and wife as trustees of THE RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST,
and
ROBERT RANDALL and SALLY RANDALL, husband and wife
Complainants,
v.
PINE WATER COMPANY, an Arizona Corporation
Respondent..

DOCKET NO. W-03512A-06-0407

NOTICE OF FILING HARRY JONES
REBUTTAL TESTIMONY

Arizona Corporation Commission
DOCKETED

JAN 25 2008

DOCKETED BY	nr
-------------	----

ASSET TRUST MANAGEMENT, CORP.
Complainants,
v.
PINE WATER COMPANY, an Arizona Corporation
Respondent.

DOCKET NO. W-03512A-06 -0613

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

DOCKET NO. W-03512A-07-0100

AZ CORP COMMISSION
DOCKET CONTROL
2008 JAN 25 P 12:28

RECEIVED

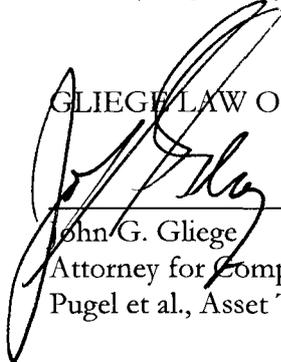
1 **BRENT WEEKES,**
2 **Complainants,**
3 **v.**
4 **PINE WATER COMPANY, an Arizona**
5 **Corporation**
6 **Respondent.**

DOCKET NO. W-03512A-07-0019

7 Complainants, RAYMOND R. PUGEL AND JULIE B. PUGEL, as trustees of THE RAYMOND
8 R. PUGEL and JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and SALLY RANDALL,
9 ASSET TRUST MANAGEMENT, and BRENT WEEKES, hereby submit the Notice of Filing Rebuttal
10 Testimony in this referenced matter. Attached hereto as Exhibit A is the Rebuttal Testimony of Harry
11 Jones.

12 RESPECTFULLY SUBMITTED this 24th day of January, 2008.

13
14 GLIEGE LAW OFFICES, PLLC

15
16 
17 John G. Gliege
18 Attorney for Complainants,
19 Pugel et al., Asset Trust Management, and Brent Weekes
20
21
22
23
24
25
26
27
28
29

1 Original and 19 copies mailed/delivered
2 This 24th day of January, 2008 to:

3 Arizona Corporation Commission
4 Attn: Docket Control
5 1200 W. Washington
6 Phoenix, AZ 85007

7 Copies of the foregoing mailed/delivered
8 This 24th day of January, 2008 to:

9 Kevin O. Torrey
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, AZ 85007

14 Christopher Kempley, Chief Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19 Ernest G. Johnson, Director
20 Utilities Division
21 Arizona Corporation Commission
22 1200 W. Washington Street
23 Phoenix, AZ 85007

24 Jay L. Shapiro
25 Fennemore Craig
26 3003 North Central Ave. Ste 2600
27 Phoenix, AZ 85012-2913

28 David W. Davis, ESQ.
29 Turley, Swan & Childers, P.C.
3101 N. Central, Suite 1300
Phoenix, AZ 85012-2643

Robert M. Cassaro
PO Box 1522
Pine, AZ 85544

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

Barbara Hall
PO Box 2198
Pine, AZ 85544

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

EXHIBIT A

Rebuttal Testimony

Of

Harry Jones

1
2 **Rebuttal Testimony of Harry D. Jones**
3

4 Question: Please state your name and business address.

5 Answer: Harry D. Jones, HC7 Box 363, Payson, AZ 85541
6

7 Q. By whom are you employed?

8 A. HDJ Management, LLC my wholly owned consulting firm which is engaged by (a) Gila
9 County as the water issues consultant in Northern Gila County; (b) as District Manager of
10 Pine Creek Canyon DWID (at Portal IV in Pine); and (c) as District Manager of Tonto Village DWID
11 near Kohl's Ranch.
12

13 Q. In what capacity are you testifying in this proceeding?

14 A. As a consultant to Tommie Cline Martin, Supervisor of District 1 of Gila County, Arizona, the
15 supervisory district in which the Pine Water Company (PWCo) and complainants are located.
16

17 Q. What is your educational background applicable to this proceeding?

18 A. I have a Masters of Business Administration and a Ph.D in economics and finance.
19

20 Q. How long have you been active in water issues and water district management in Gila County?

21 A. I have been Chairman of the Rim Trail DWID off and on for 28 years (currently in the middle
22 of my second consecutive four year term). For the last four and one-half years, I have been Gila
23 County's representative and voting partner for the Mogollon Rim Water Resources Management
24 Study, a \$600,000 joint venture of Gila County, the Town of Payson, and the Bureau of
25 Reclamation. On behalf of the Gila County Board of Supervisors, I was appointed to be the
26 operating manager of the Pine/Strawberry Water Improvement District for 15 months in 2003-
27 2004, at the time of PWCo's last rate case where the District was an intervener.
28

29 Q. What is the purpose of the testimony you are about to give?

1 A. To rebut parts of the testimony of Robert Hardcastle and Steven M. Olea that has been presented
2 in this docket.

3
4 Q. What are the general areas of testimony that you intend to offer rebuttal testimony for?

5 A. For Mr. Olea's testimony, I will first discuss the availability of information on potential water
6 supplies in the Pine area; secondly, I will discuss regulatory policy and what I believe is in the
7 public interest as applied to PWCo. For Mr. Hardcastle's testimony, I will discuss topics page by
8 page from his testimony.

9
10 Q. How will you present this information?

11 A. I will refer to page numbers of transcripts and to the lines on that page where transcripts are
12 available, and to dates of testimony where transcripts are not yet available.

13
14 **Availability of Information on Potential Water Supplies in Pine**

15
16 Q. Do Staff and Mr. Olea seem to feel that adequate water is likely to exist under Pine at this time?

17 A. Yes, finally after many years of misinformation on their part.

18
19 Q. What indications have there been over the years as to the likelihood of adequate water under
20 Pine?

21 A. All parties seem to agree the upper aquifers in Pine are limited because of geological structures
22 and shortages of moisture available to replenish the water. However, it is important to remember
23 that over the last 11+ years, all four of the Domestic Water Improvement Districts ("DWID") that
24 are contiguous with, or are surrounded by, the Pine Water Company ("PWCo") CC&N have been
25 able to develop adequate resources from even the shallow aquifers that the Company has often
26 claimed should have been used to serve their own CC&N area. In addition, one DWID
27 (Strawberry Hollow) has experienced great success in the deep aquifer, and one private land
28 owner (Pugel/Randall) has also fully developed a single deep well that has available resources
29

1 equal to approximately 75% of the total annual water distributed by all the wells under control of
2 PWCo.

3
4 Q. What are the specific facts related to the four DWIDs and other private entities which have found
5 adequate water resources, while PWCo over the same period of time has not had nearly the same
6 success?

7
8 A. To be specific, each of the districts needs to be discussed. The first is Strawberry Hollow DWID
9 (SHDWID) which received a 100 year water adequacy designation in 2005, with the adequacy
10 determined by using only 25% of the water available from the wells. Of the excess water not
11 required in the Strawberry Hollow District, 56% of that water was offered to other local water
12 purveyors as part of the adequacy application in 2005. Strawberry Hollow historically had a
13 shallow well. In 2002 a deep well was drilled, further developed and tested, over a two year
14 period. The deep well is located within 100' of the PWCo's CC&N, so it is not considered a
15 remote location. The combination of two wells allowed the SHDWID to be granted the 100 year
16 adequacy a year or so later, being only the second 100 year water adequacy subdivision in all of
17 Gila County. Only in the last few months does it appear Mr. Olea and Staff has indicated any
18 confidence that these additional water resources really existed. Staff has apparently never been
19 successful (or maybe even tried as part of "protecting the public interest") to convince the
20 Commissioners to place regulatory orders on the Company that would require PWCo to make a
21 reasonable agreement with SHDWID to purchase the excess water (now reported by Mr.
22 Hardcastle to be only \$8/1000 gallons compared to paying \$60+/1000 gallons to haul water).
23 This lack of progress in purchasing water resources under water sharing agreements and the lack
24 of regulatory involvement to make it happen does not appear to be "in the public interest".

25
26 Q. What is the second DWID to discuss?

27 A. Solitude Trails DWID (STDWID) has been successfully operated since 1996 with two wells
28 located within the PWCo CC&N, not within the Solitude Trails subdivision. The wells are
29 operated by PWCo under a water sharing and wheeling (transport) type agreement that allows for

1 sale of all excess water (approximately 90% of the total production most years) to PWCo. The
2 excess water taken from Solitude Trails has amounted to much as 22% of the total supply
3 distributed by PWC; however, PWCo has failed to take all the water available over the last few
4 years, dropping down to only 10% of total supply distributed by PWC. For some unknown reason
5 in the summer of 2007, PWCo has again started taking about 1,000,000 gallons per month rather
6 than the 500,000/month average over the last several years, all right in the middle of the worst
7 drought in modern Arizona history. Obviously these wells (both of which are in the upper
8 aquifer) continue to produce at historical levels.

9
10 Mark Fumusa, Chairman of the STDWID has notified Mr. Olea and the Staff on numerous
11 occasions in writing, at ACC hearings, at ACC public comment sessions, and at Pine/Strawberry
12 Domestic Water Improvement District (P/SDWID) meetings that this negligence of PWCo not
13 taking full advantage of these additional supplies is occurring. This water from STDWID is
14 available at \$1.00/1000 gallons compared to hauled water at \$60-\$68/1000 gallons.

15
16 My concern is why Mr. Olea and Staff have not reacted to the fact this STDWID water is going
17 unused, in violation of the order 67166 requiring PWCo to take all available local water,
18 including the STDWID water, before any hauling occurs. By not using this supply (about 6-7
19 million gallons per year available by turning on the well), the Pine rate payers have incurred
20 inconvenience, water outages, and over \$200,000 in hauling charges just in the summer of 2007..

21
22 Good regulatory oversight should not have allowed this water use shortfall to occur, since it was
23 pointed out by credible parties to the ACC many times over the last few years. One can easily
24 question why (overworked or possibly underfunded) the Staff might consistently miss this type of
25 opportunity for effective regulatory control of this CC&N holder.

26
27 Q. What is the third DWID to discuss?

28 A. The Pine Creek Canyon DWID (PCCDWID) at Portals IV abuts the CC&N at the north edge of
29 Pine. The District's main operating well is in the shallow aquifer and has successfully provided

1 resources for the existing 83 homes for 14+ years. A \$60,000 water and wastewater resource
2 study dated 11-15-07 indicated adequate water resources are available for over 294 planned
3 residential units, with an expected build out of only 214 units. The original developers of Portals
4 IV (same developers as Portal I, II, and III) are the same ones that have developed the wells in the
5 other areas, with those well in the other Portal communities turned over to PWCo and its
6 predecessors for service to all areas served by PWCo. Again, this is another example of DWIDs
7 getting the job done and staying ahead of the game, while PWCo can't seem to develop, bring
8 online, store or transport adequate resources on its own.

9
10 Q. What is the fourth DWID to discuss?

11 A. The Pine Water Association DWID (PWADWID - several different names over 120 years) has a
12 combination of wells and surface water from Pine Creek. It became a DWID in recent years and
13 has been able to provide adequate service with systems that have been steadily upgraded over the
14 decades. Adequate water resources are in place and are properly maintained. It is another
15 example of a successful water operation that is fully surrounded by the CC&N.

16
17 Q. What about the Milk Ranch well as another privately developed well success story?

18 A. The Milk Ranch well is another well documented and tested water development project that
19 generates 150 gallons per minute, with detailed test results provided to PWCo more than one
20 year ago. These results have seemingly been ignored by PWCo.

21
22 Q. Are these DWIDs, the citizen homeowners, local businesses and vacant landowners effected by
23 the fact the ACC has not been able to effectively regulate PWCo so it provides adequate service?

24 A. Yes, home values, resale opportunities, what could be a vibrant business climate, and pride of
25 ownership throughout Pine (including the DWIDs) are all diminished by the very poor water
26 reputation existing in the Pine and Strawberry communities.

27
28 Q. Are there other examples of why the Staff and Mr. Olea should have had more awareness of the
29 real water situation in Pine?

1 A. On 1-10-08, Mr. Olea claimed he had never sat down with the personnel who were conducting
2 and producing the Mogollon Rim Water Resources Management Study (“MRWRMS”). This
3 project is a joint venture of Gila County, the Town of Payson, and the Bureau of Reclamation
4 that discusses in detail the overall water issues throughout the Mogollon Rim Country. Despite
5 Mr. Olea’s memory, I did arranged a meeting on October 14, 2005 that Mr. Olea attended, for
6 which he had sent a follow-up letter to the Bureau of Reclamation relate to the topics discussed.
7 In the ACC conference room along with Mr. Olea was Bill Remick, Hydrologist of Arizona
8 Dept. of Water Resources (ADWR); Leslie Meyers, Program Manager, Bureau of Reclamation;
9 Marvin Murray, Project Consultant, Bureau of Reclamation; Marlin Scott, ACC Engineer; Mike
10 Ploughe, Town of Payson Hydrogeologist; and Harry Jones, Gila County Water Consultant.
11 Apparently Mr. Olea did not pay attention or remember discussions and illustrations during this
12 meeting that showed detailed geological mapping, sites of deep wells, a discussion of the USGS
13 study by John Parker indicating deep water sources in the Mogollon Rim area (including Pine)
14 that are recharged by leakage from the “C” aquifer above the Mogollon Rim. Recently thereafter,
15 I even supplied follow-up documentation that Staff had requested.

16
17 In addition, on 1-10-08 or 1-11-08 during cross examination by Mr. Davis, Mr. Olea claimed
18 he had seen no study of deep wells that dealt with 100 year adequacy. This is in error, or he just paid no
19 attention to almost 50% of the pages in the November 2005 Water Alternatives Report presented to the
20 ACC by PWC Co that he and his Staff analyzed and issued an opinion about. Olea claimed during
21 his testimony on 1-11-08 that Mr. Hardcastle rated one alternative a “5” (lowest), while the Staff
22 changed the rating to a “1” (highest).

23
24 **Regulatory Policies and the Public Interest**

25
26 Q. How do Mr. Olea’s positions on minimum water storage stack up against the actual
27 practices of successful operators?

28
29 A. Also, on 1-10-08 or 1-11-08, during cross examination by Mr. Gliedge, Mr. Olea

1 stated that the Arizona Dept. of Environmental Quality (ADEQ) storage standard is based on the
2 average day usage in a peak month. On page 9 of his Second Supplemental Testimony, he
3 indicates there can even be a further reduction in required storage by deducting the water production
4 of the pumping/filtering system, excluding the highest water production source in the system. If
5 some units of ADEQ are using those standard, it seems others may be using the standard in
6 Engineering Bulletin #10 dated May 1978, which states that minimum storage requirements
7 are based on average daily demand for the year, not the average day in a peak month. Bulletin #10
8 indicates in the first full paragraph on page 6-4 that "The minimum storage capacity for systems not
9 providing fire protection should approximate the annual average daily consumption." "This
10 capacity may be reduced when the source and treatment facilities have sufficient capacity, with
11 standby power capability, to supplement peak demands of the system." Regardless of which
12 of the two standards (or both) is being used at ADEQ, the standards used do not allow for adequate
13 storage in systems that have large spikes in demand, which is the case in almost every community
14 in the Rim Country. Rather than rely on the inadequate standards of ADEQ, it appears Mr. Olea needs
15 to evaluate the actual practices of successful and experienced operators throughout the Rim
16 County.

17
18 Under the formulae dictated by Bulletin #10, the situation in PWCo (as supported by Mr. Olea
19 and Staff) can be illustrated and compared to other systems. Demand in Pine is about 56,000,000
20 gallons/year, divided by 365 days = 153,424 gallons daily average. With about 970,000 gallons
21 of storage, the claims by Olea and Hardcastle that claim PWCo has more than four times the ADEQ
22 requirement are accurate. However, the ADEQ minimum requirement is highly inadequate,
23 except possibly for systems that have no significant spikes in demand and a steady
24 predictable demand. The ADEQ standard within Bulletin #10, as it currently stands on the
25 Department's website, is not complete, is not the basis for industry practice, is not in the public
26 interest, and should not be followed in the Mogollon Rim communities of Pine and Strawberry for the
27 following reasons:

- 28 • Standard is 30 years old and outdated.
- 29

- No consideration is given to spikes in demand in Bulletin #10. If peak- and short-term water demand is absolutely required to determine adequacy of wells, it certainly should be a required factor in determining adequacy of storage capacity.
- No consideration is given to recovery rates (time to refill tanks) by pumping from well or treatment plants.
- The ADEQ standards do not match up with practices of successful communities in the Rim Country, such as Payson, where water management faces many of the same challenges and is consider to be a model system in Arizona.

Following is a water storage comparison for Payson and Pine, with some comparative factors from the four domestic water improvement districts.

Water Storage Comparisons*
-2007-

<u>Factor</u>	<u>Town of Payson</u>	<u>Pine Water Co</u>
Total Storage (gallons)	8,100,000	920,000
Total Meters	8,000	2,000
Normal Population	15,000	2,000
Peak Population	30,000	6,000
Maximum Pumping Rate (gpm)	4,000	200
Maximum Pumping Rate/day (gallons)	5,760,000	288,000
Normal Demand/day-Winter (gallons)	1,000,000	66,000
Normal Demand/day-Summer (gallons)	2,000,000	266,000
Peak Demand/day-Summer Weekend/ Events (gallons)	+ 50% 3,000,000	+75% 465,000
Storage per Meter (gallons)	1,012	460
Storage/Person-Normal Population (gallons)	540	460

<u>Factor</u>	<u>Town of Payson</u>	<u>Pine Water Co</u>
Storage/Person-Peak Population (gallons)	270	153
Times Maximum Pumping Rate Could Cover Peak Demand/day	1.9	.6
Days at Maximum Pumping Rate to Refill all Tanks	1.4	3.2
Storage per Meter in Other Rim Country Communities (gallons):		
Strawberry Hollow DWID at build-out	1,795	
Solitude Trails DWID at build-out	1,282	
Portals IV DWID at build-out	1,168	
Rim Trail DWID	944	

Sources: Town of Payson—Mike Ploughe, Town Hydrogeologist.

Pine Water Co.—ACC Annual Report plus estimates

Others: Mogollon Rim Water Resources Management Study

Facts and conclusions from the numbers are:

- (a) Other communities in the area take peak demands into account, and they also consider their pumping rates in determining storage capacity.
- (b) Storage per water meter is more than twice as much in Payson when compared to PWCo.
- (c) Storage per person at max populations on weekends is 76% higher in Payson than Pine.
- (d) Percentagewise, Pine is estimated to have more of a spike in demand (triple) than Payson (double), probably due to more craft shows, festivals, and more part-time residents.
- (e) In Payson, maximum pumping rates can cover maximum demand spikes three times faster than in Pine.

1 (f) In Pine, the number of days (at maximum pumping rates) that it takes to refill all tanks is 2.3
2 times longer than in Payson.

3 (g) Storage in Pine is 460 gal/meter; in Payson 1,012 gal/meter; in Strawberry Hollow DWID 1,795
4 gal/meter (at build-out); in Solitude Trails DWID 1,282 gal/meter (at build out); at Portals IV
5 DWID 1,168 gal/meter (at build-out); and at Rim Trail DWID 944 gal/meter (has both East
6 Verde River surface water and well water to recover with at the same time).

7 (g) With PWCo at more than four times the ADEQ standard, PWCo still has the lowest reserves
8 when compared to Payson and the four DWIDs. This strongly suggests that the standard in
9 question must be completely re-evaluated as it applies to Pine.

10 (h) From virtually every standard of measurement, Mr. Olea and the ACC Staff are allowing PWCo
11 to not follow current industry practices of other water systems in the area, all of which have been
12 professionally engineered and are successfully operated while giving major consideration to peak
13 demands, and at many times the ADEQ standard for water storage.

14 (i) Mr. Olea and his Staff, and PWCo, are hiding behind the inadequate standards of ADEQ that
15 result in vacant lot owners, current rate-payers and business owners being subjected to
16 moratoriums, water outages, staged demand curtailments, and massive hauling charges that
17 greatly limit property use, property values and ultimately quality of life.

18 Q. Has Mr. Olea and the Staff been too sympathetic to PWCo and its water supply situation for
19 too long?

20 A. Apparently so. He and the Staff have seemingly bought the Company's excuses and the story
21 and outdated standards of the understaffed folks at ADWR and ADEQ for too long. Mr.
22 Olea and his Staff have not paid enough attention to the reported field practices of successful water
23 system operations in the Rim Country prior to offering recommendations to the Commissioners
24 and the Administrative Law Judge. On 1-10-08 or 1-11-08 Mr. Olea has testified that there is not
25 Staff available to review all submissions, so the policy is to take what PWCo submits at face
26 value.

27 On 1-11-08 during cross examination by Mr. Shapiro, Mr. Olea claimed that over the years there
28 has never been enough water "supply" in Pine, and new data has only come to light very recently. The
29 fact is, Mr. Olea and Staff should have known for several years that conclusion of "no water under
30 Pine" was not correct, and the appropriate answer is that PWCo and the community lacks simply
31 from water "development", whether from the shallow or deep aquifers. The success of all of the

1 DWIDs has been known for 11+ years in all cases. The deep sources have been confirmed over the
2 last eight years with a record of three for three successful deep drillings at the (1) Strawberry
3 borehole in 1999/2000 (an 1,890 foot exploratory hole with water at about 1400 feet); (2) Strawberry
4 Hollow in 2002/2003 (a 1,320 foot producing well with water at about 908 feet; and (3) Milk
5 Ranch well in 2005 (a 1,050 foot thoroughly tested well with water at about 650 feet.
6

7 Based on the above information, it continues to appear that Mr. Olea and his Staff are not paying
8 reasonable attention to the details and industry activities relate to water in the Rim Country even
9 though experts from the Bureau of Reclamation, the technical leads for the MRWRMS, the
10 Hydrogeologist from the Town of Payson (most recognized expert because of his success with
11 designating the location of and development of the two deep privately owned wells in Pine) have
12 all tried to inform him and the Staff during meetings and other ACC hearings. The not
13 listening, not watching, and not learning from the local and regional experts has resulted in the
14 ACC Staff continuing to rely on less than up to date State of Arizona entities that are "behind the curve"
15 in terms of water situations in the Pine area over the last 10 years. This outdated and less than
16 accurate information has been used to justify long-standing and improper positions on water
17 matters critical to Rim County communities, especially the communities of Pine and Strawberry.
18 Problems caused this type of regulatory oversight and lack of up to date standards are not in the public
19 interest. In addition, it is not in the public interest to treat all areas of the state the same (the required
20 water storage for instance) when differences such as stable vs. transient populations, high vs. low
21 demand spikes exist, etc. One size fits all rules and policies do not generally work well in today's
22 business and regulatory environment.
23

24 Q. Should the potential change in real property values caused by having adequate or inadequate
25 water supplies available to the properties in the CC&N be a factor in determining whether the
26 public interest is being served?
27

28 A. Absolutely. Mr. Olea did say on 1-10-08 or 1-11-08, under cross examination by Mr. Davis that
29 he gave no consideration to increased property values if a community had a 100 year adequacy of

1 water availability designation. It is certainly not the purview of the ACC to try to manipulate market
2 values of properties by its regulatory processes; however, the ACC should not permit a public
3 service corporation to take consistent actions or inactions (like not adequately trying to develop
4 reasonable water resource capacity) that tend to diminish or stagnate real property values.
5 Therefore, reasonable consideration of effects of ACC policies on real property values should be
6 considered when assessing public policy and how well it serves the public interest.

7
8 Q. Will the public interest be adequately served if the complainants are not allowed outside the
9 CC&N and the current practices of PWCo related to the complainants' situations are allowed to
10 continue?

11 A. Absolutely not. If the CC&N holder is allowed to continue "as is" and the complainants are not
12 let out, the potential for new well and water resource development by the private sector will likely
13 fall to zero. Large scale domestic water development has unfairly and generally become the
14 responsibility of the private sector in Pine. If the CC&N holder cannot develop water resources on
15 their own (as is the case with PWCo), and if the private sector is to be encouraged to
16 explore for new water to better guarantee its future water adequacy, to enhance the values of their
17 own real property, to make excess water available to a CC&N holder under water sharing
18 agreements, or to secure water for a newly created DWID, then that private water exploration activity
19 should encouraged by the ACC by letting the Complainants out of the CC&N in this matter. If not,
20 no private individual is going to want to ever make an investment in his property or community the
21 way Mr. Peterson of SHDWID or Mr. Pugel/Randall of Milk Ranch have done in this case.

22
23 The evidence as to the benefit of this logic for getting water resources "in hand" is that
24 over the last 25 years the local real estate subdivision developers have formed three new DWIDs to
25 serve themselves, rather than become a part of the PWCo and its predecessor monopolies. The
26 unfortunate fact that the complainants happen to currently be stuck within PWCo's CC&N is why
27 they are having to go through multiple lawsuits and legal proceedings. If they are let out of the CC&N,

28 I fully believe they will form one or more well managed, financially sound DWIDs that
29 will drill additional wells that will be able to serve their own properties, and most likely have

1 excess water available for use by the CC&N holder for the rest of Pine assuming of course that in the
2 eyes of the complainants, that an entity more trustworthy and competent than Brooke is
3 available to accept and effectively store and/or distribute the excess water.
4

5 Mr. Olea and the ACC Staff need to realize the free market, entrepreneurial system has
6 distinct benefits, is not a revolutionary idea and its operation and benefits should not be discouraged.
7 Free market activities by the private sector and activities of public service corporations can exist side-
8 by-side if the public service corporation is competent, trusted and properly regulated. However, the
9 resulting situation and unsatisfactory performance of PWCo, Strawberry Water Company and
10 the ACC (in its regulatory role) appears to be beyond repair in the minds of many Pine and Strawberry
11 real property owners. Many of the most active community members want to form a "domestic"
12 district and control their own destiny, without Brooke and the ACC in their way.
13

14 Therefore, letting the Complainants out of the CC&N would best serve the "public
15 interest" since it is likely more total water would be available in these communities if the private
16 sector was not further discouraged. The public interest could alternatively be served by (1) the ACC
17 forcing a sale of the assets of the PWCo to a newly created "Domestic Water Improvement District",
18 (2) by simply taking the CC&N monopoly license away from PWCo and SWCo and putting it in the
19 hands of another Public Service Corporation that is known to run a more trusted and professional
20 organization, or (3) imposing major operational and financial orders on PWCo and SWCo related to
21 immediately (a) requiring development of several new wells, (b) requiring short-term major
22 investments in system storage and infrastructure repairs, and (c) requiring new call center
23 operations, all subject to close monitoring of PWCo to measure progress and to issuance of
24 meaningful fines and penalties for non-performance.
25

26 Q. Is it in the public interest to severely restrict for long periods of time the use of private
27 properties?

28 A. Mr. Olea and the Staff seem to give no real consideration to the fundamental issue of denial
29 of private property rights, and the net result of the effective taking of property without due

1 compensation because no water from the regulated monopolist is available to the lands. The focus of
2 the Staff and PWCo appears to be only on the current customers with little regard for the vacant lot
3 owners and the owners of land not yet subdivided. The public interest is not served by
4 ignoring the 40%-50% of the undeveloped acreage and lots in Pine and the 30- 40% of
5 undeveloped acreage and lots in Strawberry. Many owners of these parcels are still relatively
6 silent, but they are being organized and will become increasingly politically active if their
7 property rights continue to be denied year after year. The recall of PSWID District Board members is
8 apparently only the first step in their quest for local self control of their properties.

9
10 **Rebuttal to Testimony of Robert Hardcastle**

11
12 Pages/lines

13
14 933 22-25

15 934 1-3

16 934 14-24 Mr. Hardcastle makes the statement related to the purpose of the Tetra Tech study as
17 “being able to maximize the productivity of the Milk Ranch (“MR”) well, and being able to utilize it for
18 the benefit of all customer of Pine”. Basically, Mr. Hardcastle is saying “what is the cost to hook up all
19 of the Milk Ranch water to all the customers of Pine and Strawberry”. By specifying the objective of the
20 study that way, he did not give any consideration to the concept that “half a loaf is better than no loaf at
21 all”. Rather than asking the engineering firm to tell him what it costs to take the water to the 300K tank
22 over a mile away, he should have evaluated “what does it cost to use the Milk Ranch well to help solve
23 the water problem for **some** or all of Pine and Strawberry”. Mr. Hardcastle needs to give adequate
24 consideration to the fact that with the MR well in the system, he will likely gain substantial relief for his
25 wells in north Pine and Strawberry since water will not need to be sent downhill from north Pine and
26 Strawberry to serve the southern part of Pine where the MR well is located.

27
28 If the Milk Ranch well could serve 25%-50% of the meters in the CC&N, he should look at the cost of
29 making that type hookup and not limit the cost to a “home-run” for the whole system. In fact, the part of

1 Pine that suffers the most from water outages is in the area that could likely be served by the Milk Ranch
2 well if it was hooked into the main that runs within a few hundred feet of the well. Narrowly specifying
3 the purpose of the Tetra Tech study the way he did automatically (a) made the cost of the Milk Ranch
4 well hookup unreasonably high, (b) helps Mr. Hardcastle to justify not selecting the MR well
5 alternative, and (c) allows Mr. Hardcastle to strengthen the arguments that the K2 project is a “solution
6 in hand”, apparently aimed at allowing the Company and the Staff to more strongly recommend to the
7 Commissioners and the Administrative Law Judge that the CC&N should not be “sliced up” because
8 adequate water can come from the K2, and that the Milk Ranch well is too costly to hook into the
9 existing system.

10
11 Keeping the CC&N intact does not serve the community any better, although it probably makes for a
12 higher value of the combined Pine Water Company (“PWCo”) and Strawberry Water Company
13 (“SWCo”) because of a greater number of potential hookups. The number of potential meters is
14 important to Brooke Utilities, Inc. (“BUI”) because if the Pine and Strawberry companies or assets are
15 ever sold, BUI as the shareholder, will benefit since water companies are often sold on the basis of meter
16 counts, times a negotiated price.

- 17
- 18 938 9-10
- 19 940 8-18
- 20 941 21-25
- 21 942 4-13

22 The discussion on these pages between Mr. Hardcastle and Judge Nodes relates to why PWCo
23 agreed to the K2 contract without first making close comparisons of the pros and cons of the K2 project
24 and the MR well. The going forward with the K2 agreement prior to conducting that comparative
25 analysis indicates a lack of due diligence or possible deliberate attempt to avoid facts that may lead to a
26 different conclusion. Mr. Hardcastle’s excuse for not aggressively pursuing that comparison (not exactly
27 knowing the cost of the Pugel water) is weak. He could have estimated those costs, along with what he
28 thought costs for operations and depreciation would be; however it appears he did not want to show the
29 MR well had any possibility of being used (rule it out on too expensive to hook up), since the K2 is his

1 trump card (a solution in hand) to keep Pugel/Randall, et. al. from exiting the CC&N. This failure to
2 fully and professionally consider other reasonable alternatives is a prime example of the lack of business
3 judgment and due diligence efforts that has consistently plagued Pine and Strawberry water companies.
4 Also see 1122-1127 below.

5
6 942 23-25

7 943 1-10 This discussion between Judge Nodes and Mr. Hardcastle is a good example of PWCo
8 constantly seeking to shift the blame for a problem created by PWCo to others. In this particular case,
9 the company is shifting the blame for poor consumer support of the K2 project to the PSWID for not
10 taking into consideration the opposition of Strawberry residents to the outright taking of "their" water.

11
12 965 16-25

13 966 1-2 Mr. Hardcastle's whole answer at this point of testimony was mischaracterized. His
14 answer at 965 16-25 that "you did not recover anything through rates" for Project Magnolia is true;
15 however BUI (an unregulated private company) made massive recovery of operational profits by
16 booking the cost of the \$449,000 pipeline (actually started by PWCo) into BUI, and then charging
17 PWCo 6.8 times its actual costs of \$34,000 per year for use of the pipeline (\$15/1,000 gallons to move
18 water downhill 1.8 miles, resulting in \$533,000 of revenue to Brooke Utilities over 23 months).
19 Hardcastle's answer "yes" that "didn't you always take the position that it was Brooke's asset until
20 ordered otherwise by the Commission?" is a true answer; however the Commissioners didn't fall for his
21 argument and ultimately the ACC (in the settlement agreement of 2004) ordered the unregulated BUI
22 parent company to return ownership of the pipeline to PWCo. In addition to forcing BUI to return the
23 pipeline to its rightful owner, the ACC required PWCo to exempt \$267,000 of the \$533,000
24 intercompany payable (resulting from use of the pipeline) from future rate increase applications.

25
26 Mr. Hardcastle' answer a 966 1-2 is also accurate, but extremely mischaracterized. Yes, Brooke built
27 the pipeline, basically as project managers for their PWCo subsidiary company. Brooke did that on all
28 projects because at the time (and maybe still today), PWCo had no employees, no trucks, no call-center,
29 etc. (only in-ground infrastructure, wells, and tanks), so some entity needed to manage the construction

1 process, and that was BUI. The commissions did not buy the fact that actually doing the construction
2 gave BUI any ownership of its subsidiary's asset.

3
4 1122-1127 The cross examination and discussion between Mr. Hardcastle and Mr. Davis (and at
5 another time between Commissioner Mayes and Mr. Hardcastle) needs to be analyzed to gain insight to
6 the meaning of the statement "we made a business judgment" that Mr. Hardcastle has used throughout
7 the hearings. Also, this series of questions and answers also is reflective of the question of whether
8 PWCo cares about trying to operate the Company at the lowest reasonable cost and in a prudent manner.

9
10 Business judgment is difficult to appraise; is highly different from industry to industry, especially related
11 to specialized matters; but does have some common elements that can be evaluated. Judgment is
12 centered on the activity of being able to make a decision or form an opinion objectively where action is
13 required. In business, judgment is related to use of logic, to use of problem solving techniques (define,
14 collect facts, develop alternatives, evaluate alternatives, select best alternative, install solutions, monitor
15 results, and make adjustments), and to selecting and moving toward objectives. Financial analysis is a
16 key part of applying logic to business decisions, recognizing that many other skills are used to carry out
17 decisions. It seems Mr. Hardcastle lacked judgment this situation, since he was unable to justify his
18 process for making the decision to move forward without considering some key factors and financial
19 comparisons necessary to make a prudent and reasoned decision that would effect his company and
20 customers for years to come. All managers and people do not have good judgment all of the time;
21 however this situation seemed somewhat indicative of what occurs when under pressure of not looking
22 forward, not investing, misleading others, slanting facts, not taking care of customers, not carrying out
23 the intent of regulatory controls, etc., some of which are what PWCo has been accused of doing over the
24 years. Also see 938 9-10 above

25
26 In addition to the judgment issues related to this particular decision process, it seems he may have been
27 taking an action that was not reasonable and prudent for PWCo rate-payers. Spending \$62 to \$68 to haul
28 water that is even remotely possible to buy at \$8 or even \$24 as suggested by Mr. Davis is certainly not
29

1 in the best interest of the current customers, especially when it may go on for long periods of time
2 (weeks and months).

3
4 1292 18-19 The discussion about the November 2005 Water Supply Alternatives Report, as required
5 under Decision 66823, as prepared by PWCo is mischaracterized throughout the testimony. The
6 statement made several times by Mr. Hardcastle that it is 27 or 28 alternatives is incorrect, since they are
7 numbered only 1-21. The discussion that it was extensive and contained about 500 pages is misleading
8 since about 45% of the pages were actually a copy of the Strawberry Hollow DWID 100 year water
9 adequacy application which contained over 200 pages. Nearly half of the listed alternatives were taken
10 from the JB-1 through JB-8 options developed by John Breninger (initial K2 negotiator and current
11 Brooke Utility consultant) which were adopted as the official water development alternatives for the
12 PSWID (all wells dealt with water to be taken from Strawberry to Pine).

13
14 Many of the alternatives were saddled with unrealistic cost estimates, often at 5 or 10 times costs of
15 similar projects recently completed or similarly evaluated by the Town of Payson, using their normal
16 cost projection templates. For example, the three deep well alternatives located within Strawberry
17 (alternatives 2-4) ranged from \$3.7 million to 4.7 million, while Mr. Hardcastle is today projecting a
18 similar well structure at the K2 site in Strawberry at a maximum cost of \$1.3 million for 150 gpm
19 production. Testimony in the current case has indicated actual costs of the 150 gpm Pugel/Randall well
20 and the Strawberry Hollow wells to be about \$250,000. Rankings of the three Strawberry deep well
21 alternatives were at "5", the lowest possible rating in the study. Another indication of rankings being
22 highly skewed for one reason or another was the Staff's recommendation to require PWCo to pursue an
23 alternative the Company ranked a "5" (poor alternative) that the Staff ranked a "1" (best to pursue).

24
25 Any implication that the study was thoroughly analyzed by the Staff is a misnomer, even though the
26 Commissioners' order for the study required "analysis and discussion" with all affected entities and
27 stakeholders, i.e. meaning some participation and evaluation by Staff, Town of Payson, Gila County,
28 Bureau of Reclamation, SRP, ADEQ, and ADWR, none of which, except staff, ever seemed to be
29 confirmed (i.e. no peer review) after I had conversations with those parties. The after-the-fact peer

1 reviews by Gila County and the most important one by Mike Ploughe of Payson were apparently
2 completely ignored by Staff and PWCo. My conclusion from two years ago, which still stands today, is
3 that the PWCo report was thick, bulky, and contained lots of fluff, and lacked depth.

4
5 By avoiding the most critical evaluations of the report (Ploughe and Jones), both the PWCo and Staff
6 left in tact the general conclusion that there were “no easy answers”; “under the best scenarios the
7 hydrology is uncertain and the costs are substantial”; “clearly the implementation of solutions cannot
8 take place in the traditional regulatory environment”; “future decision making requires the balancing of
9 the tremendous risks with the speculative and potentially limited benefits of **any of the analyzed**
10 **alternatives**”, Bottom line, if you don’t want to invest any money or take any risks to solve the
11 problem, it is easy to overstate expected cost, eliminate additional alternatives, and rank most everything
12 “5-Poor” (13 of 21 alternatives).

13
14 1337-23-25

15 1338-1339

16 1488-1489 The discussion from pages 1337-1339 and again at 1488-1489 relate to the Company’s
17 belief that the problems of moratoria, disincentives to invest, high risk, high cost, etc. are the result of
18 the regulators. Sure, some of the problem has to do with regulatory restrictions or requirements.
19 However, this appears to me to go along with an apparent goal of the company to do its very best to
20 regularly try to shift blame for everything that is wrong to other parties. Typical excuses over the years
21 are (a) “no more water is to be found under Pine Arizona, i.e. blame God (proven wrong by adequate
22 water at DWIDs and two deep wells with significant capacity); (b) the ACC is to blame for moratoria,
23 staged water use restrictions, and hauling charges (i.e. PWCo shares no responsibility for the situation,
24 and the Company did not ask to have the restrictions put on), and (c) Gila County Board of Supervisors
25 allowed the formation of the neighboring water improvement districts that take the water that should
26 flow into PWCo wells. In essence, it appears that the company is hiding behind the moratoriums and
27 other excuses in an effort to avoid reasonable investments and risk taking required for public service
28 corporations so that adequate service can be provided to current and future rate-payers.

1 1375-1376 The explanation about Strawberry Water Co. paying for water from wells owned by
2 PWCo that was retained in the Strawberry community is misrepresented by Mr. Hardcastle. It seems
3 Hardcastle wants everyone to believe just because SWCo pays the commodity rate to PWCo, everything
4 is fair. The point to make here is the hauling rate is \$60-\$68 per 1,000 gallons, while the commodity rate
5 from Pine charged to Strawberry is \$9.045, a cost difference of \$50-\$60/1000, a significant cost
6 difference the Pine residents are required to absorb. Also, the rate paid by Pine Water Co. to Payson
7 Water Co when hauled from the Knoll's well in Star Valley is extremely profitable for Payson Water Co.
8 since the average sale price of commodity water (water sold above the base rates) from Payson Water
9 Co. is possibly about \$4.00/1000 based on very little water sold at the top of the scale (\$9.00+) with
10 most water sold at \$2.50-\$3.75/1000 gallons. This all means Pine Water Co. customers are unfairly
11 supplementing Strawberry Water Co and Payson Water Co. PWCo has the ability to recover water
12 hauling charges from its customers on the following monthly bill, while Strawberry has no ability to
13 recover charges for water hauling. Thus, it is very advantageous to make all hauling go to Pine, and
14 none to Strawberry, saving SWCo about \$50-\$60/1,000 and costing the Pine rate-payer about \$50/\$60
15 per thousand gallons purchased that could have come down the Magnolia pipeline at about \$2.50 per
16 thousand.

17
18 1419 14-21 In regards to whether Mr. Richey ever met with Mr. Hardcastle in Richey's restaurant in
19 Strawberry during the K2 negotiations, the answer of "no" given by Mr. Hardcastle needs to be clarified.
20 During the early discussions for the K2 site, there were multi-page documents developed called MOU's
21 (ultimately drafts 1-5 were essentially "letters of intent" or "term sheets"). Misters Richey, Suhr, Jones,
22 Pugel, Cassaro, Paul, Hardcastle and several others were at a meeting in the back right-hand corner of
23 the Mogollon Steakhouse owned by Richey. Because of frustration in making progress with the MOU
24 (mainly developed between Hardcastle, Suhr and Breninger), Suhr asked Richey to become the lead
25 party to help clarify numerous issues related to the MOU. Richey ran the meeting with Hardcastle, and
26 the rest listened. Sometime after that meeting, the negotiating team of Richey and Suhr started with a
27 whole new document, they ultimately called the "K2 agreement". The switching of names of the
28 document, or the tossing out of the first five drafts and starting to develop a clean new document should
29 not be interpreted as a separate transaction completely disconnected from the efforts related to reaching

1 agreement on use of the K2 site for water development activities. At that time, and for several months
2 thereafter, Richey took the lead of the committee in trying to finalize an agreement for use of the K2
3 property as a well-site, but he was not yet a member of the PSWID Board. During the process of putting
4 the agreement together over the next few months, Paul Paul and Bob Cassaro resigned from the Water
5 Development Committee (“WDC”) due their concerns of possible violations of the open meeting laws
6 by the WDC.

7
8 1608 24-25

9 1609 1-11

10 1610 1-4 Mr. Hardcastle’s statements at 1609 1-11 that the developers of the Milk Ranch well and
11 SH3 “drilled those wells in those locations not because they had conducted a huge hydrological study for
12 the area, they drilled those wells in those locations for exactly the same reasons that we are drilling the
13 well in the K2 well (site) because they own the property.” This statement is not true. The SH3 and MR
14 well owners drilled at their selected sites because of the mapping of faults and other geological structures
15 that Ploughe, old time community water people, and first drillers for Peterson used. Lots of maps and
16 prior studies of the area were used to pick those sites. It is important to note, in addition to the prior
17 maps, photos, etc. used for the two deep wells, we now have much more detailed geological maps and
18 information about to be released as part of the deliverables of the Mogollon Rim Water Resources
19 Management Study.

20
21 This statement by Hardcastle seems to illustrate his willingness to slant the truth about activities of
22 others; or his lack of knowledge or investment of time or money to do the job right; or it simply
23 indicates his policy on where to drill this deep K2 well was to only look at properties Brooke already
24 owned. This policy illustrates his lack of appreciation for good geological studies, location of faults, and
25 other procedures used by professions with long-term local experience in selection of drilling sites.

26
27 On 1-11-08, during cross examination by Mr. Shapiro, Mr. Olea claimed that over the years there has
28 never been enough “**water supply**” in Pine, and new data has only come to light very recently. The
29 truth is, it has been known for several years that assessment of the situation is incorrect, and the correct

1 answer is that Pine suffers from lacks from a lack of “**storage capacity**” and a lack of “**water**
2 **development**” in both shallow aquifers and in deep aquifers that have been confirmed with a record of
3 three-for-three successful drillings (1) at the Strawberry borehole in 1999/2000 (a 1890 foot exploratory
4 hole with water at about 1400 feet), (2) at Strawberry Hollow in 2002/2003 (a 1320 foot producing well
5 with water at about 908 feet), and (3) at the Milk Ranch well in 2005 in a 1,050 foot well with water at
6 about 650 feet.

7
8 Q. Does this complete you testimony?

9 A. Yes.