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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

7 RAYMOND R. PUGEL AND JULIE B.
 PUGEL AS TRUSTEES OF THE RAYMOND
 8 R. PUGEL AND JULIE B. PUGEL FAMILY
 9 TRUST, and ROBERT RANDALL AND
 SALLY RANDALL

Complainant,

v.

PINE WATER COMPANY,

Respondent.

DOCKET NO: W-03512A-06-0407

Arizona Corporation Commission

DOCKETED

AUG 20 2008

DOCKETED BY

13 ASSET TRUST MANAGEMENT, CORP.,

Complainant,

v.

PINE WATER COMPANY,

Respondent.

DOCKET NO: W-03512A-06-0613

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

Complainant,

v.

PINE WATER COMPANY,

Respondent.

DOCKET NO: W-03512A-07-0100

BRENT WEEKES,

Complainant,

v.

PINE WATER COMPANY,

Respondent.

DOCKET NO: W-03512A-07-0019

(Consolidated)

**PINE WATER COMPANY'S REPLY IN
SUPPORT OF MOTION TO DISMISS**

1 Pine Water Company (“PWCo” or “Respondent”) hereby files this Reply in
2 support of its Motion to Dismiss for Failure to Prosecute (“Motion”) the complaints filed
3 by Raymond R. Pugel and Julie B. Pugel as Trustees of the Raymond R. Pugel and Julie
4 B. Pugel Family Trust, and Robert Randall and Sally Randall, Docket No. W-03512A-06-
5 0407 (collectively “Pugels”), and by James Hill and Sioux Hill, Docket No. W-03512A-
6 07-0100 (“Hills”)(collectively “Pugels” and “Hills” will be referred to herein as
7 “Complainants”).

8 **I. The Facts Support Dismissal.**

9 PWCo reiterates that Complainants’ failure to take any meaningful action to move
10 their cases against PWCo forward warrants dismissal. The Complainants correctly state
11 that PWCo mistakenly cited Rule V Uniform Rules of Practice of the Superior Court
12 instead of its current incarnation, Rule 38.1 of Arizona Rules of Civil Procedure in the
13 Motion, an inadvertent mistake for which undersigned counsel takes responsibility.
14 Nevertheless, labeling PWCo’s request for dismissal as a “concocted remedy” is
15 inappropriate, as dismissal for failure to prosecute is not a novel concept, and it is well
16 within the Hearing Officer’s authority to dismiss matters before it.

17 PWCo’s Motion is proper pursuant to Ariz.R.Civ.Proc. 41(b), which grants the
18 Hearing Officer discretion to dismiss based on the facts in this case. While Complainants
19 posture that no showing has been made warranting dismissal, the facts supporting
20 dismissal are undisputed. As stated in the Motion, more than two years have passed since
21 the filing of the first complaint. Hills has taken no action to further their complaint since
22 January 11, 2008, and Pugels or its counsel have taken no meaningful action to move their
23 complaint towards its conclusion since March 24, 2008. It is this unresponsiveness and
24 failure to comply with the procedures that Complainants agreed to after the conclusion of
25 the direct cases in January that has caused PWCo to resort to filing a motion to dismiss to
26 move the litigation forward.

1 Complainants are also correct that the ALJ must weigh all of the equities to the
2 parties to the proceedings when determining whether dismissal is warranted. The
3 Complainants argue that dismissal of the Complaints would be unfair because they did not
4 have adequate notice of the potential of dismissal, stating "as the Motion filed by Pine
5 Water Company indicates, both parties have worked towards the resolution of this
6 matter..." and that "the hearing is well on its way to final conclusion." See Complainants'
7 Response at 4. This is a distortion of the facts. Complainants have not taken any
8 meaningful action to move their case forward for several months. Indeed, that is why
9 Complainants make this bald assertion without citing any specific facts or otherwise
10 demonstrating how they have worked to move the case forward. On the other hand,
11 PWCo has continued to expend its time and resources on resolving the Complaints in the
12 face of Complainants' delay tactics. After over two years of litigation, it would be
13 inequitable to allow the Complaints to continue to sit idle while Complainants collaterally
14 attack and pursue other lawsuits against PWCo.

15 In the alternative, PWCo is willing to directly address the Complainants' actions
16 (or lack thereof) at a procedural conference called by the ALJ, if that is preferable, since
17 the most recent hearings were concluded on January 11, 2008. However, if Complainants
18 persist with the same delay tactics exhibited over the past several months, PWCo is
19 entitled to dismissal.

20 DATED this 20th day of August, 2008.

21 FENNEMORE CRAIG, P.C.

22 By 

23 Jay L. Shapira

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ORIGINAL and nineteen (19) copies of the foregoing filed this 20th day of August, 2008:

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Copy of the foregoing hand delivered this 20th day of August, 2008 to:

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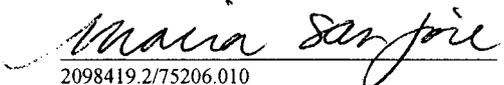
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