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AZ CORP COMMISSION
DOCKET CONTROL

EXCEPTION

Arizona Corporation Commission
DOCKETED
SEP 15 2008

DOCKETED BY MN

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** **EXCEPTION TO THE RECOMMENDED OPINION AND ORDER of ADMINISTRATIVE LAW JUDGE dated September 5, 2008**

COME NOW, the Intervenors, Michael Greer and Fred B. Krafczyk, by and through their attorney undersigned and submit the following exception to the Opinion and Order dated September 5, 2008 submitted by the Administrative Law Judge.

When does "No" not mean "No?" Apparently, "No" does not mean "No" when it means giving public money to Pine Water Company. The fundamental issue is whether or not the Commission can make a decision which is in derogation of ***Article 9, Section 10 of the Constitution of the State of Arizona*** which provides that,

> "No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation."

All members of the Commission take an oath of office to uphold the constitution and laws of the State of Arizona. Likewise, all attorneys take the same oath. Sadly, in this instance the recommended order, in

the interest of providing aid to Pine Water Company, is choosing to ignore the provisions of the Arizona Constitution. In paragraphs 45 and 46 of the proposed Opinion and Order of September 5, 2008, the Administrative Law Judge makes it quite clear that despite the clear wording of the State Constitution, and the principal guideline in Constitutional interpretation that the Constitution must be interpreted in its plain, unambiguous and ordinary language. ***See Fairfield v. Foster, 25 Ariz. 146, 214 P.319 (1923); County of Greenlee v. Frank B. Laine, 20 Ariz. 296, 180 P. 151 (1919.)*** The Commission should choose to enter an order which on its face will allow for a direct violation of the state constitution to occur. The rationale adopted by the hearing officer is that first the Commission does not have the jurisdiction to decide constitutional issues. This is true, but that doesn't give the Commission the power to act contrary to those issues. To achieve that end the Administrative Law Judge then continues to attempt to interpret this Constitutional prohibition in the light of other provisions of the State Constitution, but ending with a caveat that these issues can yet be presented to a court with appropriate jurisdiction. Thus the Commission should beware that to adopt the Administrative Law Judges proposed Order may lead to additional litigation which may in the long run not only effect this particular contract, but could place further judicial limitation on the powers of the Commission.

The suggestion of the Administrative Law Judge that the Intervenors may raise these significant issues before the Arizona Court also is contrary to Arizona law. In order to bring these issues before a court the Intervenors must show that they have standing to raise these issues before the Court. The Arizona Courts have limited individual standing to challenge actions of a municipal or quasi municipal unit of local government to cases where the taxpayer is able to clearly show some pecuniary loss, ***City of Scottsdale v. McDowell Mountain Irrigation and Drainage District, 107 Ariz. 117, 483 P.2d 532 (S.Ct. 1971) citing Henderson v. McCormick, 70 Ariz. 19, 215 P.2d 608 (1950)***, merely questioning the illegality of the contract in which the district engaged may not be sufficient to confer standing upon the Intervenors if they were to appear in a Court of Law. While others may have standing to challenge the contract before a court of law if the Intervenors do not, this clearly does not give license to the Commission to ignore the ***Constitution of the State of Arizona.***

To go back to the first question, "When does 'No' not mean 'No'" it is when there has been an appropriate application of a significant amount of legal razzle dazzle to the Arizona Constitution so as to

make "No" into "Yes." Truly the Commission, in its efforts to protect the public interest, does not want to be a party to such efforts.

Therefore, it is respectfully requested that the Arizona Corporation Commission reject the proposed form of Opinion and Order and enter an order upholding the Constitution of the State of Arizona and not approve the request of Pine Water Company.

RESPECTFULLY SUBMITTED this 11th day of September, 2008.

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John G. Gliege

Original and thirteen copies of the foregoing
Mailed this 11th day of September, 2008 to:

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
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Copies of the foregoing
Mailed this 11th day of September, 2008 to:

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