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Arizona Corporation Commission

AZ CORP COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION
 9 OF PINE WATER COMPANY FOR
 10 APPROVAL TO (1) ENCUMBER A PART
 11 OF ITS PLANT AND SYSTEM
 12 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

PINE WATER COMPANY'S NOTICE OF WITHDRAWAL

13 Pine Water Company ("PWCo") hereby notifies the Arizona Corporation
 14 Commission ("ACC") that it withdraws its pending application in this docket and
 15 currently does not seek approval to (1) encumber a part of its plant and system pursuant to
 16 A.R.S. § 40-285(A) and (2) issue evidence of indebtedness pursuant to A.R.S. § 40-302(A)
 17 relating to the Joint Well Development Agreement ("JWDA") between PWCo and the
 18 Pine-Strawberry Water Improvement District ("District") dated May 1, 2007. The reason
 19 for PWCo's withdrawal of the pending application is that approval of the pending ACC
 20 application in this docket is not necessary at this time.

21 As PWCo has stated throughout this case, the relief sought in this docket is not
 22 necessary for PWCo to perform its obligations under the terms of the JWDA. Rather,
 23 PWCo filed the pending application out of an abundance of caution and because approval
 24 to encumber an asset that was to be built in the future originally was required by the
 25 District as a pre-condition to deposit of the \$300,000 in escrow under ¶ 4.2.1.1 of the
 26 JWDA. After executing the JWDA, however, the District waived that requirement and

1 deposited that money in escrow, which means that approval of the encumbrance is no
2 longer needed per the terms of the JDWA.

3 Further, the requested financing approval allowing PWCo to issue evidence of
4 indebtedness in favor of the District pursuant to A.R.S. § 40-302(A) is not ripe under the
5 terms of the JWDA. Under ¶ 4.2.2 of the JWDA, PWCo is required to refund the
6 \$300,000 provided by the District for the K2 well in “36 equal monthly payments with the
7 first payment due the first day of the month immediately following entry of an ACC
8 Decision recognizing the Project as used and useful and including in rate base for rate
9 making purposes.” Thus, until the K2 Project is constructed *and* the ACC issues a
10 decision putting the K2 project in PWCo’s rate base, PWCo will not have any payment or
11 refund obligations to the District and the requested issuance of indebtedness is not ripe or
12 necessary.

13 Finally, the District recently attempted to terminate the JWDA, and the District has
14 refused to perform its obligations under the JWDA. In turn, PWCo filed arbitration
15 claims against the District for breach of the JWDA and unlawful, bad-faith termination.
16 PWCo seeks damages and specific performance of the JWDA. PWCo and the District
17 have an arbitration hearing scheduled for February 2009 to resolve these issues relating to
18 the JWDA. As a result, the District’s actions in purporting to terminate the JWDA and
19 refusing to perform have rendered ACC approval of the application in this docket
20 unnecessary.

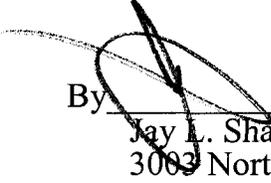
21 For these reasons, PWCo respectfully requests that the Administrative Law Judge
22 issue an order acknowledging PWCo’s withdrawal of the pending application in this
23 docket, and directing administrative closure of this docket.

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DATED this 24th day of November, 2008.

FENNEMORE CRAIG, P.C.

By


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ORIGINAL and thirteen (13) copies of the foregoing filed this 24th day of November, 2008:

Docket Control
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COPY of the foregoing hand-delivered this 24th day of November, 2008:

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Law Judge
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