

ORIGINAL

OPEN MEETING AGENDA ITEM



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6 **John G. Gliege (#003644)**
7 **Stephanie J. Gliege (#022465)**
8 **Attorney for Fred B. Krafczyk & Michael Greer**

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

<p>10 IN THE MATTER OF THE APPLICATION</p> <p>11 OF PINE WATER COMPANY FOR</p> <p>12 APPROVAL TO (1) ENCUMBER A PART</p> <p>13 OF ITS PLANT AND SYSTEM PURSUANT</p> <p>14 TO A.R.S. §40-285(A); AND (2) ISSUE</p> <p>15 EVIDENCE OF INDEBTEDNESS</p> <p>16 PURSUANT TO A.R.S. §40-302(A).</p>	}	<p>9 DOCKET NO. W-03512A-07-0362</p> <p>11 OPPOSITION TO PINE WATER COMPANY'S</p> <p>12 NOTICE OF WITHDRAWAL</p>
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17 COMES NOW INTERVENORS, Fred B. Krafczyk & Michael Greer, by and through their
18 attorney undersigned and submit the following *Opposition to Pine Water Company's Notice of*
19 *Withdrawal* of its application to approve the encumbrance of a part of its plant and equipment and to
20 issue evidence of indebtedness. No doubt, standing on the precipice of the cataclysmic abyss of the
21 alteration of the manner in which water is provided in Pine, Arizona, Pine Water Company has chosen to
22 attempt to extricate themselves from the morass they have created in an effort to avoid oversight by the
23 Arizona Corporation Commission on their actions and inactions. Once again, this is an inappropriate
24 action.

25 Pine Water Company is requesting Withdrawal of their Application on the grounds that:

- 26 1. The encumbrance is no longer needed.
- 27 2. That Pine Water Company does not have any payment or refund obligation to Pine
- 28 Strawberry Water Improvement District and the requested issuance of the indebtedness is not
- 29 ripe or necessary.

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1 3. That the District has denounced the Joint Well Development Agreement (JWDA) and Pine
2 Water Company has brought an action against the District regarding the same.

3 What the Pine Water Company overlooks are the terms and conditions of *A.R.S. §40-301* which
4 clearly gives this Honorable Commission the right to regulate this type of activity for which the
5 Application of Pine Water Company originally instituted. By withdrawing the Application Pine Water
6 Company is effectively admitting that they brought an action before the Commission, which has no
7 merit. This action has proceeded through this Commission through the Hearing stage, through post
8 hearing briefs, through the Administrative Law Judges Recommended Decision and objections thereto.
9 For Pine Water Company to now unilaterally withdraw its Application after the incredible expenditure of
10 resources by the Commission and the Intervenors prior to a final decision is clearly an act of bad faith.

11 Pine Water Company is obviously concerned about the impact of any decision of this
12 Commission on the pending Arbitration proceeding they have brought against the District for breach of
13 the JWDA. Any decision unfavorable in any way to Pine Water Company could have a negative effect
14 on the outcome of the Arbitration Hearing. This sudden withdrawal without just cause is strictly a
15 litigation tactic on the part of Pine Water Company. Just as in civil matters, where one cannot
16 unilaterally dismiss a complaint after the trial without leave of the Court, see *Rule 41, Arizona Rules of*
17 *Civil Procedure*, there is nothing in the procedural rules of this Commission which allows for this type
18 of conduct.

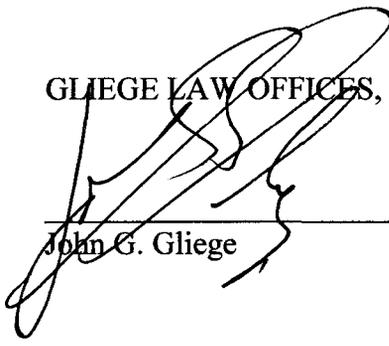
19 Pine Water Company's tactics are designed to attempt to remove Pine Water Company's
20 business practices from under the jurisdiction and authority of the Commission. Pine Water Company
21 has stated in its letter to Chairman Mike Gleason that the potential condemnation of its assets will be an
22 extremely costly and lengthy litigation and will be in effect a "hostile acquisition." Rather than
23 accepting the reality that the District may likely prevail and work toward maximizing the amount
24 available for the purchase of the assets of the water company, Pine Water Company is attempting to
25 carry on a multifaceted encounter with the District. The withdrawal of this Application may in the mind
26 of Pine Water Company strengthen their positions elsewhere, disregarding the interest of the
27 Commission in protecting the public health, safety, and welfare of Pine Water Company's customers.
28 The Commission must retain and conclude this case to protect the customers of the water company from
29 the situation which would remain if Pine Water Company were somehow able to retain its assets and

1 then attempt to include in its next rate application the cost of this proceeding which they are now so
2 willing to abandon.

3 IT IS RESPECTFULLY REQUESTED, that the Administrative Law Judge not issue an Order
4 acknowledging Pine Water Company's withdrawal of its Application and not directing administrative
5 closure of this docket. Rather this matter should proceed as scheduled at the Open Meeting of the
6 Commission on December 16th and 17th 2008.

7 RESPECTFULLY SUBMITTED this 2nd day of December, 2008.

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9 GIEGE LAW OFFICES, PLLC

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13 John G. Gliege
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1 Original and thirteen copies of the foregoing
Mailed this 2nd day of December, 2008 to:

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3 Docket Control Center
4 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

5 Copies of the foregoing
6 Mailed this 2nd day of December, 2008 to:

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