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ARIZONA CORPORATION COMMISSION
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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| RAYMOND R. PUGEL AND JULIE B. PUGEL, husband and wife as trustees of THE RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST,<br>and<br>ROBERT RANDALL and SALLY RANDALL, husband and wife,<br>Complainants<br>v.<br>PINE WATER COMPANY, an Arizona Corporation<br>Respondent. | DOCKET NO: W-03512A-06-0407 |
| ASSET TRUST MANAGEMENT, CORP.,<br>Complainant,<br>v.<br>PINE WATER COMPANY,<br>Respondent. | DOCKET NO: W-03512A-06-0613 |
| JAMES HILL and SIOUX HILL, husband and wife as trustees of THE HILL FAMILY TRUST,<br>Complainant,<br>v.<br>PINE WATER COMPANY,<br>Respondent. | DOCKET NO: W-03512A-07-0100 |
| BRENT WEEKES,<br>Complainant,<br>v.<br>PINE WATER COMPANY,<br>Respondent. | DOCKET NO: W-03512A-07-0019<br>(Consolidated)<br><br>**PINE WATER COMPANY'S RESPONSE TO REQUEST FOR PROCEDURAL CONFERENCE** |

Arizona Corporation Commission
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Respondent Pine Water Company ("PWCo") submits the following response to Complainants' Request for Procedural Conference dated June 4, 2009. In that request, complainants Pugel and Randall have requested "a Procedural Hearing Conference so that the above captioned matter can be scheduled for completion of the hearings on the Rebuttal Testimony and the conclusion of this matter." That request should be denied for the simple reason that complainants' failure to take any action to move this case forward since August 2008 has rendered this complaint matter as stale and obviates any need for a hearing or any further action by the Commission. Further, this docket has been rendered moot by the condemnation complaint filed by the Pine-Strawberry Water Improvement District ("District") to condemn the assets of PWCo, including its water facilities and CC&N service rights.

In addressing complainants' request for a procedural conference, the Commission must consider the sordid procedural history of this proceeding, which is highlighted by the failure of complainants to take any substantive action to reach a final decision on the complaint. This docket dates back nearly 36 months--on June 21, 2006, the Pugels filed a complaint against PWCo under Docket No. W-03512A-06-0407. The parties conducted substantial discovery over a roughly six-month period in 2007, and prefiled multiple rounds of testimony. The Commission held hearings on August 6-10, 2007, September 27-28, 2007, November 19, 2007, and finally on January 10-11, 2008.

In turn, Pugels filed additional rebuttal testimony on January 25, 2008. PWCo then served its 9th and 10th sets of data requests on Pugels on February 5 and 11, 2008, with responses provided by the Pugels on March 11 and 12, 2008. On March 24, 2008, PWCo served its 11th set of data requests, and provided numerous objections to the previous responses provided by Pugels. On June 16, 2008, Pugels then responded to PWCo's 11th set of data requests, but failed to address the outstanding data request issues. On June 27, 2008, Pugels provided a supplement to their 11th set of data requests responses.

Complainants haven't provided any additional responses to data requests since that time, and the outstanding issues delineated in PWCo's March 24, 2008 letter remain unresolved. PWCo filed a motion to dismiss for lack of prosecution on August 7, 2008 and complainants filed a response on August 18, 2008.

The bottom line is that complainants filed their complaint in this matter on June 21, 2006—nearly 36 months ago. The last hearing in this matter occurred in January 2008. To say the least, complainants have not diligently pursued this matter. Complainants' lack of action and the passage of time in this case have rendered this complaint proceeding stale and wasteful. Even further, additional developments have rendered resolution of this complaint proceeding as moot. Specifically, the Pine-Strawberry Water Improvement District has filed a condemnation lawsuit to condemn the assets of PWCo, including its water facilities and CC&N service rights.

As the Commission is aware, the District signed an Order for immediate possession of PWCo and Strawberry Water Company ("SWCo"), which was entered by the Gila County Superior Court on May 5, 2009. That Order required the District to post a $3,200,000 bond and take possession of the water systems by May 22, 2009. Unfortunately, the District violated the Order for Immediate Possession by failing to post the bond and take possession of the water systems by May 22, 2009. Despite the District's violations of that Order, the District (represented by Mr. Gliege, who also is counsel for complainants) recently reaffirmed its intent to proceed with the condemnation of PWCo in Yavapai County Superior Court. This means that there is absolutely no reason to proceed with this complaint proceeding. Obviously, it doesn't make any sense to take further action on a complaint proceeding to delete complainants from PWCo's

CC&N when the District has filed legal proceedings to condemn the Company's assets and CC&N service rights.[1]

Rather than acknowledge these overriding circumstances which render this complaint proceeding unnecessary, complainants now seek to schedule a hearing in this matter, which boils down to a request that the Commission, Commission Staff and PWCo spend additional time and money resolving what amounts to a stale and moot complaint matter. To say the least, any further proceedings in this docket would waste the Commission's time and resources, as well as the resources and money of PWCo. As such, PWCo respectfully requests that the Commission decline to schedule a procedural conference in this matter and permanently stay this proceeding pending resolution of the condemnation proceeding.

RESPECTFULLY SUBMITTED this 11 day of June, 2009.

FENNEMORE CRAIG, P.C.

By_____

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[1] In the midst of the discovery disputes in March 2008, counsel for PWCo asked counsel for Complainants if Pugels "intend to ever address the inadequacy" of their responses to the 9th and 10th set of data requests as requested in the March 24, 2008 letter. Mr. Gliege replied that his "clients the PSWID are beginning the appraisal of the Pine and Strawberry Water Companies. Please advise as to what access Pine and Strawberry is willing to give them to the physical plant and used and useful assets of these companies for purposes of inspection." Put another way, complainants already have linked their actions in this complaint proceeding to the actions of the District in seeking condemnation of PWCo.

ORIGINAL and fifteen (15) copies of the foregoing filed this 11th day of June 2009:

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