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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 COMMISSIONERS

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2009 JUL 21 A 11: 13

ARIZONA CORP COMMISSION
DOCKET CONTROL

8 IN THE MATTER OF:

9 RAYMOND R. PUGEL AND JULIE B. PUGEL AS
10 TRUSTEES OF THE RAYMOND R. PUGEL AND
11 JULIE B. PUGEL FAMILY TRUST, and ROBERT
12 RANDALL AND SALLY RANDALL,

Complainants,

13 v.

14 PINE WATER COMPANY,

Respondent.

DOCKET NO. W-03512A-06-0407

Arizona Corporation Commission

DOCKETED

JUL 21 2009

DOCKETED BY 

15 JAMES HILL and SIOUX HILL, husband and wife
16 as trustees of THE HILL FAMILY TRUST,

Complainant,

17 v.

18 PINE WATER COMPANY,

Respondent.

DOCKET NO. W-03512A-07-0100

19 **BY THE COMMISSION:**

20 On June 21, 2006, Raymond R. Pugel and Julie B. Pugel, as trustees of the Raymond R. Pugel
21 and Julie B. Pugel Family Trust, and Robert Randall and Sally Randall (collectively "Pugel
22 Complainants"), filed with the Arizona Corporation Commission ("Commission") in Docket No. W-
23 03512A-06-0407 a Complaint ("Pugel Complaint") against Pine Water Company ("Pine Water" or
24 "Company"). The Complaint seeks to delete property owned by the Complainants from Pine Water's
25 certificated service area based on the allegation that Pine Water is not able to provide satisfactory and
26 adequate water service in a reasonable time and at a reasonable rate.

27 On September 25, 2006, Asset Trust Management Corp. ("ATM") filed a similar Complaint
28 against Pine Water in Docket No. W-03512A-06-0613 ("ATM Complaint").

On February 23, 2007, James Hill and Sioux Hill, as trustees of The Hill Family Trust, filed a

1 complaint (“Hill Complaint”) against Pine Water in Docket No. W-03512A-07-0100.

2 By Procedural Orders issued December 19, 2006 and April 3, 2007, respectively, the ATM
3 Complaint and the Hill Complaint were consolidated with the Pugel Complaint.

4 On January 12, 2007, Brent Weekes filed a complaint (“Weekes Complaint”) against Pine
5 Water in Docket No. W-03512A-07-0019. The Weekes Complaint was consolidated with the other
6 three complaints by Procedural Order issued May 16, 2007.

7 Hearings were conducted, but not concluded, in the consolidated proceeding, and additional
8 testimony has been filed. A Stipulation to settle the ATM Complaint was filed on January 25, 2008.
9 A Stipulation to settle the Weekes Complaint was filed on April 1, 2008.

10 On August 7, 2008, Pine Water filed a Motion to Dismiss the Pugel Complaint and the Hill
11 Complaint for “lack of prosecution.”

12 On August 18, 2008, counsel for the Pugel Complainants filed a Response to Motion to
13 Dismiss and Request for Procedural Conference. Counsel for the Pugel, ATM, and Weekes
14 Complaints also requested that the ATM and Weekes Complaints be severed from the consolidated
15 proceeding and dismissed in accordance with the Stipulations.

16 On August 20, 2008, Pine Water filed a Reply in Support of Motion to Dismiss.

17 By Procedural Order issued September 8, 2008, the ATM and Weekes Complaint dockets
18 were severed from the consolidated proceeding and a procedural conference was scheduled for
19 September 29, 2008.

20 On September 11, 2008, counsel for the Pugel Complainants filed a Request for Procedural
21 Conference.

22 On September 29, 2008, a procedural conference was held, as scheduled. During the
23 conference, the parties agreed that further action in the Pugel and Hill Complaint dockets should be
24 postponed pending further action by the Commission at its December 2008 Open Meeting in a related
25 financing/encumbrance docket (Docket No. W-03512A-07-0362) pertaining to the proposed K2
26 Well.

27 On October 15, 2008, a Motion for Summary Adjudication was filed in each of the ATM and
28 Weekes Complaint dockets, as well as copies of the settlement agreements between those

1 complainants and Pine Water.

2 On March 12, 2009, the Pugel Complainants filed a Request for Procedural Conference.

3 On June 11, 2009, the Pugel Complainants again filed a Request for Procedural Conference.

4 The Pugel Complainants state that a scheduling conference should be conducted to arrange for
5 completion of the hearing and conclusion of this matter.

6 On June 11, 2009, Pine Water filed a Response to Request for Procedural Conference. Pine
7 Water claims that the complaints are stale due to the passage of time since the cases were filed and
8 since hearings were held, and that the complaints are moot due to the pending condemnation action
9 filed by the Pine Strawberry Water Improvement District ("PSWID" or "District") in Gila County
10 Superior Court and a court Order for Immediate Possession¹. Due to the condemnation proceedings,
11 Pine Water argues that scheduling additional hearings would waste the Company's and the
12 Commission's time and resources, and therefore no procedural conference should be conducted for
13 scheduling purposes.

14 On July 13, 2009, the Pugel Complainants filed a Reply to Pine Water's Response to Request
15 for Procedural Conference. The Pugel Complainants assert that the matter is not stale and that they
16 have been diligent in pursuing their complaint. With respect to the claim that the complaint is moot
17 due to the pending condemnation lawsuit, the Pugel Complainants contend that Pine Water is
18 opposing the District's condemnation and it could take years before the matter is concluded. Finally,
19 the Pugel Complainants claim that the complaint "does have an impact upon the Pine Water
20 Company and the value of the property in the condemnation action" and due to the moratoria on new
21 water connections in the Pine Water system, the Complainants are unable to provide water service to
22 their property. The Pugel Complainants therefore request that a procedural conference be conducted
23 to discuss resumption of the complaint hearings.

24 IT IS THEREFORE ORDERED that a **procedural conference shall be scheduled for**
25 **August 5, 2009, at 12:00 noon**, at the offices of the Commission, Hearing Room 1, 1200 West
26 Washington Street, Phoenix, Arizona 85007. The purpose of the conference is to discuss whether

27 ¹ The condemnation lawsuit was subsequently transferred to Yavapai County Superior Court. According to Pine Water,
28 the PSWID failed to post a \$3,200,000 bond and failed to take possession of the Pine Water system by May 22, 2009, as
required by the court's Order.

1 this matter should be resumed pending completion of the condemnation lawsuit and, if so, the
2 appropriate procedures for resuming the hearing, the status of the condemnation proceedings in
3 Yavapai County Superior Court, and any other relevant procedural issues.

4 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
5 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
6 *pro hac vice*.

7 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
8 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
9 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
10 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
11 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
12 Administrative Law Judge or the Commission.

13 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
14 Communications) applies to this proceeding and shall remain in effect until the Commission's
15 Decision in this matter is final and non-appealable.

16 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
17 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

18 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
19 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
20 hearing.

21 DATED this 21st day of July, 2009.

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25 _____
26 DWIGHT D. NODES
27 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
this 21st day of July, 2009 to:

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