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Date: August 1, 2012

AZ CORP COMMISSION  
DOCKET CONTROL

To: **Docket Control**  
**Arizona Corporation Commission**  
**1200 West Washington St.**  
**Phoenix, AZ 85007**

2012 SEP 6 AM 10 18

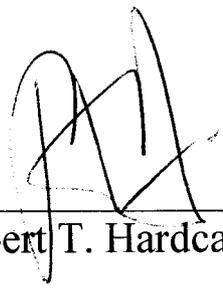
From: Robert T. Hardcastle  
Payson Water Co., Inc.  
(661) 633-7526

Arizona Corporation Commission  
**DOCKETED**  
SEP 06 2012  
DOCKETED IN *JM*

FOR FILING ORIGINAL AND 13 COPIES INTO:

**DOCKET NO. W-03514A-12-0007**

Smith vs. Payson Water Co.

By:   
Robert T. Hardcastle

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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Robert T. Hardcastle  
Payson Water Co., Inc.  
P.O. Box 82218  
Bakersfield, CA 93380-2218  
*Representing Itself In Propria Persona*

**COMMISSIONERS**

Gary Pierce, Chairman  
Paul Newman, Commissioner  
Brenda Burns, Commissioner  
Bob Stump, Commissioner  
Sandra D. Kennedy, Commissioner

IN THE MATTER OF J. ALAN SMITH	)	Docket No. W-03514A-12-0007
COMPLAINANT	)	
	)	<b>MOTION TO QUASH</b>
	)	<b>SUBPOENA</b>
VS.	)	
	)	
PAYSON WATER CO., INC.,	)	
<u>RESPONDENT</u>	)	

On June 9, 2011 Complainant Smith filed informal complaint 2011-95692 alleging wrongful disconnection of his water service under a Stage 3 mandatory water curtailment condition.

On December 14, 2011 informal complaint 2011-95692 was closed after the Complainant and Payson Water Co. agreed to a refund of \$200 related to reconnection of his water service. According to Staff, Complainant Smith was “pleased” to learn from Staff of the account adjustment (see Staff Report dated July 30, 2012).

On January 10, 2012 Complainant Smith (hereafter “Complainants”) filed a Formal Complaint into Docket No. W-03514A-12-0007 based on previously submitted informal complaint number 2011-99889.

On February 2, 2012 Payson Water Co filed an Answer to the Complaint and a Motion to Dismiss.

1 On February 16, 2012 Complainant filed a Reply to Payson Water Co.'s Answer.

2 On February 23, 2012 a Procedural Order was issued scheduling a procedural  
3 conference for March 9, 2012.

4 On March 9, 2012 a Procedural Conference was conducted with the Parties.

5 On March 29, 2012 Payson Water Co. filed a supplemental Motion to Dismiss.

6 On March 30, 2012 Payson Water Co. filed a Motion to Quash Brooke Utilities,  
7 Inc. as a party to the Complaint.

8 On April 3, 2012 Complainant filed a Response and Objection to Respondent's  
9 Motion to Quash Brooke Utilities, Inc. as a party to the Complaint.

10 On April 3, 2012 Complainant filed a Response and Objection to Respondent's  
11 Motion to Dismiss and Motion to Deny.

12 On April 9, 2012 Payson Water Co. filed a Reply to Complainant's Response to  
13 Payson Water Co.'s Motion to Dismiss and Motion to Deny.

14 On April 9, 2012 Payson Water Co. also filed a Reply by Payson Water Co. to  
15 Complainant's Response and Objection to Respondent's Motion to Quash Brooke  
16 Utilities, Inc. as a Party to the Complaint.

17 On April 13, 2012 Complainant filed a Response and Objection to Respondent's  
18 Reply to Complainant's Response to Respondent's Motion to Dismiss and Deny.

19 On April 20, 2012 the Utilities Division of the Arizona Corporation Commission  
20 ("Staff") filed a Notice of Filing regarding the status of a subpoena issued to Martin's  
21 Trucking.

22 On May 3, 2012 Staff filed a Status of Mediation indicating that a settlement was  
23 not reached by the parties and requested a hearing be scheduled.

24 On June 18, 2012 a Procedural Order was issued which set forth the hearing date  
25 of August 7, 2012 and the compliance dates and deadlines as it relates to this Docket. In  
26 addition, the Procedural Order provided that Payson Water Co. and Staff shall file  
27 responsive rejoinder testimony no later than July 30, 2012 (see Procedural Order at page  
28 2, lines 19-20).

1 On July 18, 2012 Complainant Smith filed a Notice of Complainant's Initial  
2 Discovery and Disclosure.

3 On July 23, 2012 Complainant Smith filed a Notice of Complainant's Second  
4 Discovery and Disclosure.

5 On July 30, 2012 Payson Water Co. timely filed its Rejoinder Testimony.

6 On July 30, 2012 the Utilities Division of the Commission's Staff timely filed its  
7 Staff Response.

8 On July 30, 2012 Payson Water Co. filed its Supplemental Motion to Quash  
9 Brooke Utilities, Inc. as a party to this Complaint.

10 On July 31, 2012 Payson Water Co. filed its Initial Disclosure and Discovery  
11 pleading.

12 On August 1, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the  
13 Complaint.

14 On August 2, 2012 Payson Water Co. filed its Initial Notice of Disclosure.

15 On August 6, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the  
16 Complaint.

17 On August 7, 2012 Complainant filed its Motion to Continue Hearing on the  
18 Complaint.

19 On August 7, 2012 a Hearing was conducted where various pending Motions were  
20 heard, argued, and ruled upon. The Administrative Law Judge ruled that Payson Water  
21 Co.'s Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint would be  
22 granted subject to the same conditions granted under Docket No. W-03514A-12-008. The  
23 Administrative Law Judge also denied Payson Water Co.'s Supplemental Motion to  
24 Dismiss. The Administrative Law Judge also granted Complainant's Motion to Continue  
25 Hearing on the Complaint for a period not to exceed 90 days. The Administrative Law  
26 Judge did not issue a dispositive ruling on Complainant's Motion to Compel compliance  
27 with its Subpoena of witness Jim Pearson previously filed in this matter.

28 On August 7, 2012 Complainant filed its Fourth Notice of Discovery and  
29 Disclosure.

1 On August 7, 2012 Complainant filed on behalf of prospective intervenor Tresca  
2 an Application for Intervention and Motion to Intervene into Docket No. W-03514A-12-  
3 0007.

4 On August 7, 2012 Complainant filed its Response and Objection to Respondent's  
5 Motion to Dismiss and Motion to Deny.

6 On August 8, 2012 Complainant filed its Notice of Service of Subpoena dated  
7 August 2, 2012 on Payson Water Co., Inc.

8 On August 9, 2012 Payson Water Co. filed its Objection to acceptance of Dennis  
9 B. Treca as an intervenor.

10 On August 9, 2012 Payson Water Co. filed its Motion to Dismiss a Portion of the  
11 Complaint.

12 On August 10, 2012 Payson Water Co. filed its Objection to Complainant's Fourth  
13 Discovery and Disclosure.

14 On August 20, 2012 Complainant filed its Response to Respondents Objection to  
15 Tresca Application for Intervention.

16 On August 20, 2012 Complainant filed its Response to Respondents Motion to  
17 Dismiss a Portion of the Complaint and Motion to Deny.

18 On August 20, 2012 Complainant files its Response to Respondents Objection to  
19 Complainant Fourth Discovery and Disclosure and Motion to Deny.

20 On August 21, 2012 Payson Water Co. filed its Reply to Complainant's Response  
21 to Respondents Motion to Dismiss a Portion of the Complaint.

22 On August 23, 2012 Payson Water Co. filed its Notice of Timely Response to  
23 Complainant's Subpoena dated August 2, 2012.

24  
25 **I. COMPLAINANT'S CONTINUING ABUSE OF PROCESS**

26 On August 27, 2012 Payson Water Co. received the third subpoena (see attached  
27 Exhibit 1) from the Complainant requesting various additional documents which  
28 Complainant feigns it does not already have in its possession or has public access to. At  
29 the present time the Commission's Executive Director and the Hearing Division are

1 enabling and facilitating Complainant's continuing and ongoing abuse of the Respondent  
2 and the Complaint process. On August 7, 2012 the presiding Administrative Law Judge  
3 ruled that the Gehring Docket No. W-03514A-12-0007 was to become consolidated as  
4 part of the record in the instant Smith Docket. The Gehring Docket already includes  
5 hundreds of pages of documents, more than 55 Docket filings, two days of Hearing  
6 transcripts and testimony from more than a dozen witnesses. Despite the extensive record  
7 already created the Complainant wants more and more evidence they deem essential to  
8 proving their case.

9 Respondent Payson Water Co. already timely replied to Complainant's prior subpoena  
10 dated just 15 days prior on August 2, 2012. Did Complainant's not request documents in  
11 that Subpoena that are just now being regarded as essential to their case? Did they not  
12 know of the need for additional documents and evidence referred to in the last subpoena.  
13 Did the Complainant's not have a factual basis, supported by evidence, to file the formal  
14 Complaint in the first place?

15 On January 10, 2012 the Complainant filed his formal Complaint. The Complaint was  
16 supported by various alleged facts, argument and documents attached to the Complainant.  
17 It is obvious the Complainant filed a false and unwarranted Complaint if it could not  
18 prove its case at that time supported by the facts, documents and evidence in its  
19 possession at that time. If the Complainant's case requires the massive amount of  
20 additional documents demanded from the Respondent's using the Commission's  
21 subpoena powers, as presently described, that are essential to their case then the basis of  
22 the original formal Complaint was obviously frivolous, unsupported and unwarranted.

## 23 24 **II. COMPLAINANT'S CHARADE MUST END**

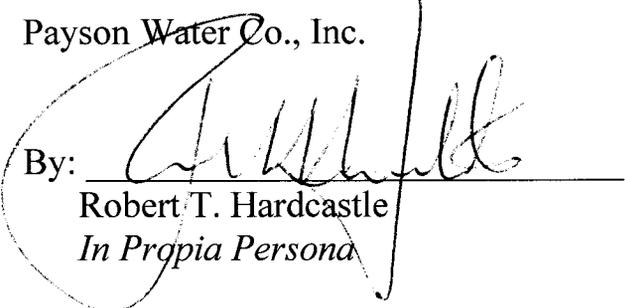
25 It appears the Commission's Executive Director will issue any subpoenas requested  
26 by the Complainant's without a close examination or case management of the facts.  
27 When is enough enough? The Commission's Executive Director should consider that  
28 both parties were prepared to start the Hearing on the long previously scheduled hearing  
29 date of August 7, 2012. In preparation for the Hearing **counsel for Staff did not even**

1 make a single data request of the Respondent requesting additional documents or  
2 evidence that could not be provided at the Hearing. Yet, Complainant's cannot prove  
3 their own case without mountains of documents, in some cases already provided or  
4 available as public documents, in support of a case that best resembles tilting windmills.  
5 This abuse must end.

6 Payson Water Co. respectfully requests that the Commission and the  
7 Administrative Law Judge quash the subpoena and stop further abuse of a process that  
8 Complainant's have obviously redefined as a witch hunt.

9 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day August 2012.

10 Payson Water Co., Inc.

11  
12  
13 By:   
14 Robert T. Hardcastle  
15 *In Propria Persona*

16 ORIGINAL and 13 copies filed  
17 this 28<sup>th</sup> day August 2012, with:  
18

19 **Docket Control**  
20 **Arizona Corporation Commission**  
21 **1200 West Washington St.**  
22 **Phoenix, AZ 85007**  
23

24 And copies mailed to the following:  
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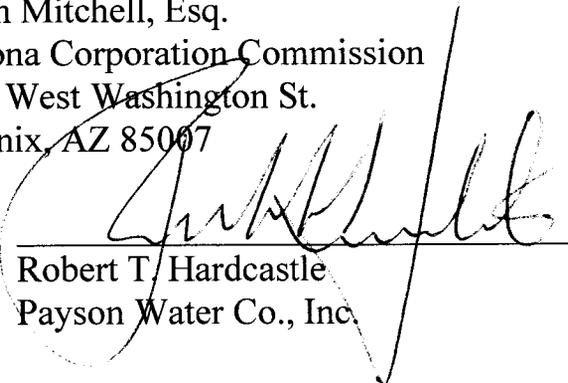
28 Dwight Nodes, Administrative Law Judge  
29 HEARING DIVISION  
30 Arizona Corporation Commission  
31 1200 West Washington St.  
32 Phoenix, AZ 85007  
33

34 J. Alan Smith  
35 8166 Barranca  
36 Payson, AZ 85541

1  
2 Janice Alward, Chief Counsel  
3 Legal Division  
4 Arizona Corporation Commission  
5 1200 West Washington St.  
6 Phoenix, AZ 85007

7  
8 Steve Olea  
9 Utilities Division  
10 Arizona Corporation Commission  
11 1200 West Washington St.  
12 Phoenix, AZ 85007

13  
14 Robin Mitchell, Esq.  
15 Arizona Corporation Commission  
16 1200 West Washington St.  
17 Phoenix, AZ 85007

18  
19 By:   
20 Robert T. Hardcastle  
21 Payson Water Co., Inc.

22  
23 **END**

# **EXHIBIT 1**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE- Chairman  
4 BOB STUMP  
5 SANDRA D. KENNEDY  
6 PAUL NEWMAN  
7 BRENDA BURNS

RECEIVED

AUG 27 2012

BROOKE UTILITIES

8 IN THE MATTER OF

DOCKET NO. W-03514A-12-0007

9 J. Alan Smith  
10 Private Citizen, injured party,

**ADMINISTRATIVE  
SUBPOENA DUCES TECUM**

Complainants,

11 vs.

12 PAYSON WATER CO. INC./BROOKE  
13 UTILITIES INC.

Respondents.

14 **To: Robert T. Harcastle and/or David Allred**  
15 **Brooke Utilities, Inc. and Payson Water Co. Inc.**  
16 **1010 S. Stover Rd. Payson, AZ. 85541**  
17 **P. O. Box 82218**  
18 **Bakersfield, CA. 93380**

19 **YOU ARE HEREBY COMMANDED**, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-  
20 3-109 and Ariz. R. Civ. P. 30 and 45 to produce and provide no later than Ten Days (10) after receipt  
21 of this Subpoena copies of the following documentation to the Complainant; J. Alan Smith: 8166  
22 Barranca Road; Payson, Arizona 85541 in connection with the administrative proceedings in the above  
23 captioned action and as follows:

- 24 1. Provide Copy of Mr. David Allred's Certification as a Class 4 Water Operator.
- 25 2. Provide Copy of the Water Sharing Agreements that Brooke Utilities, Inc. and Payson Water  
26 Co. entered into with the following Well Owners to supplement the MDC System:
  - 27 a) Patricia Behm;
  - 28 b) El Caballo Club;
  - c) Lisa and Ben Harmon;
  - d) John Olson;

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- e) Mary Hansen;
- f) Any other person or legal entity.

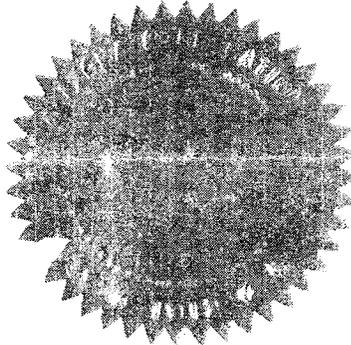
3. Provide Copy of records of all payments made to Well Owners of the above mentioned Water Sharing Agreements and/or any wells from which Brooke Utilities, Inc. and Payson Water Co. purchase water for the MDC System for the following Well Owners, Wells and years:
  - a) Patricia Behm Well No. 55-560398 for the years 2005 through 2012;
  - b) El Caballo Club Well No. 55-585747 for the years 2005 through 2012;
  - c) Lisa and Ben Harmon Well No. 55-553798 for the years 1997 through 2012;
  - d) John Olson Well No. 55-553798 for the years 2002 through 2012;
  - e) Mary Hansen Well No. 55-553798 for the year 2012
  - f) Any other person or entity Well No. 55-553798 for the years 1997 through 2012.
4. Provide Copy of all records of disconnects or termination of service for the years 2009, 2010 and 2011 for both non-payment and Curtailment Plan violations.
5. Provide Copy of all documentation, accounts and disbursement of funds obtained by Brooke Utilities, Inc. and Payson Water Co. from all of the Curtailment Plan fines and fees imposed on Customers of the MDC System for the years 2009, 2010, 2011 and 2012.
6. Copy of Brooke Utilities, Inc. and Payson Water Co. costs for the cost and hauling of water to the MDC System for the year 2010 including Invoices and hauling logs.
7. Provide a list of all Payson Water Co. employees employed during the year 2011.
8. Provide copy of Payson Water Co. CC&N (Certificate of Conveyance and Necessity).

**YOU HAVE BEEN SUBPOENED BY:** J. Alan Smith  
8166 Barranca Rd.  
Payson, Arizona 85541  
Telephone: (928) 951-2083

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

1           **DISOBEDIENCE OF THIS SUBPOENA** constitutes contempt of the Arizona Corporation  
2 Commission and may subject you to further proceedings and penalties under law, pursuant to A.R.S.  
3 § 40-424.

4           Given under by hand the seal of the Arizona Corporation Commission this, 17<sup>th</sup> day  
5 of August, 2012.



6  
7   
8 Ernest G. Johnson, Executive Director  
9 Arizona Corporation Commission

10  
11  
12           **CERTIFICATE OF SERVICE**

13           The undersigned swears (or affirms) that he/she is qualified to serve this subpoena and that he/she  
14 did so by showing the original to and informing the witness of its contents and by delivering a copy  
15 thereof to him at 2:05 a.m./p.m. on AUG 27, 2012 **Robert T. Harcastle, and/or**  
16 **his Agent David Allred**, Brooke Utilities, Inc. and Payson Water Co. Inc. 1010 S. Stover Rd.  
17 Payson, AZ. 85541.

18   
19 TERRY DAVID VAUGHN #3760  
20 Person Serving Subpoena

21           Subscribed and sworn to before me on \_\_\_\_\_, 2012

22 \_\_\_\_\_  
23 Notary Public

24 \_\_\_\_\_  
25 My Commission Expires

27 Persons with a disability may request a reasonable accommodation such as a sign language  
28 interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal,  
Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail  
[sabernal@azcc.gov](mailto:sabernal@azcc.gov). Requests should be made as early as possible to allow time to arrange the  
accommodation.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE- Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF

J. Alan Smith  
Private Citizen, injured party,  
  
Complainant,  
  
vs.  
  
PAYSON WATER CO. INC./BROOKE  
UTILITIES INC.  
  
Respondents.

DOCKET NO. W-03514A-12-0007

**APPLICATION FOR ADMINISTRATIVE  
SUBPOENA DUCES TECUM**

Complainant J. Alan Smith requests the issuance of a subpoena duces tecum to **Robert T. Hardcastle**, Payson Water Co. and Brooke Utilities, Inc. pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109, and Ariz. R. Civ. P. 30 and 45 in connection with the administrative hearing in the above-captioned action.

DATED this 13<sup>th</sup> day of August, 2012.



J. Alan Smith  
8166 Barranca Road  
Payson, Arizona 85541  
Telephone: (928) 951-2083