

ORIGINAL



0000141336

Arizona Corporation Commission

DOCKETED

JAN 10 2013

1 Michael J. Harper, Bar #18386
2 WALKER & HARPER, P.C.
3 111 West Cedar Lane
4 Suite C
5 Payson, Arizona 85541
6 Telephone: (928) 474-0322
7 Fax: (928) 474-2445
8 mjh@walkerharper.com

RECEIVED
AZ CORP COM
DOCKET 001
2013 JAN 10

DOCKETED BY

Attorneys for J. Alan Smith

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

J. ALAN SMITH,

NO. W-03514A-12-0007

Complainant,

v.

PAYSON WATER CO., INC./BROOKE
UTILITIES, INC.,

Respondent.

NOTICE OF SUBMISSION OF
DEMAND FOR COMPLIANCE
WITH SUBPOENAS AND
REQUEST FOR ISSUANCE OF
PROCEDURAL ORDER
DIRECTING COMPLIANCE
PROCEEDINGS IN THE
SUPERIOR COURT

Complainant , through counsel, hereby gives notice of the issuance of its demand to Jim Pearson and Pearson/Transport/Pearson Water to comply with the Administrative Subpoenas Duces Tecum issued in this matter and discussed in the status conference held on September 28, 2012. As the Administrative Law Judge will recall, there was a request that Complainant's counsel issue a written demand to Mr. Pearson prior to the institution of formal proceedings to enforce the Subpoenas Duces Tecum. Undersigned counsel complied with that request, but to no avail. Attached as Exhibit 1 is counsel's November 5, 2012 letter to Mr. Pearson, which was sent both by overnight mail and certified mail, return request requested. No response of any nature was received by Mr. Pearson.

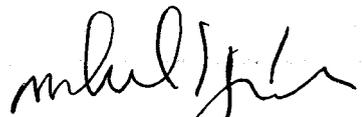
Based upon the foregoing, Complainant renews his request for enforcement of the Subpoenas as requested in his September 24, 2012 Motion to Initiate an Action in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Superior Court to Compel Jim Pearson, Pearson Transport, and Others to Comply with Subpoenas. Specifically, Complaint requests that the Commission direct staff to commence enforcement proceedings in the Maricopa County Superior Court as authorized by the authority set forth in that Motion.

DATED: January 8, 2013.

WALKER & HARPER, PC



Michael J. Harper
Attorney for J. Alan Smith

ORIGINAL

1 ORIGINAL and 13 copies mailed for filing
2 this 8th day of January, 2013 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

6 and copies mailed on the same date to:

7 Dwight Nodes, Administrative Law Judge
8 HEARING DIVISION
9 Arizona Corporation Commission
10 1200 W. Washington St.
11 Phoenix, AZ 85007

11 Robert T. Hardcastle
12 BROOKE UTILITIES, INC.
13 P.O. Box 82218
14 Bakersfield, CA 93380

14 Janice Alward, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
18 Phoenix, AZ 85007

18 Steve Olea, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 W. Washington Street
22 Phoenix, AZ 85007

21 Robin Mitchell, Esq.
22 ARIZONA CORPORATION COMMISSION
23 1200 W. Washington Street
24 Phoenix, AZ 85007

25 
26 _____

EXHIBIT 1

Michael J. Harper
Direct Dial
Payson (928) 474-9230
Mesa (480) 380-1562

Walker & Harper, PC
ATTORNEYS AT LAW

November 5, 2012

Via UPS overnight mail & certified mail,
return receipt requested

Jim Pearson
Pearson Transport/Pearson Water
1120 Rodeo Road
Williams, AZ 86046

Jim Pearson
Pearson Transport/Pearson Water
P.O. Box 193
Williams, AZ 86046

Re: Smith v. Payson Water Co., Inc./Brooke Utilities, Inc.
Arizona Corporation Commission Docket No. W-03514A-12-0007

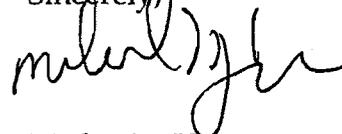
Dear Mr. Pearson:

This office is legal counsel to J. Alan Smith in connection with the above-referenced matter pending before the Arizona Corporation Commission. Enclosed with this letter is a copy of an Administrative Subpoena Duces Tecums issued by the Corporation Commission to you on July 19, 2012. The Subpoenas ordered your attendance before the Commission on August 7, 2012 and required that you bring with you copies of a number of documents relevant to this dispute. As you know, you failed to comply with the Subpoenas or otherwise make arrangements to provide the information referenced therein.

I am writing to request that you contact me immediately regarding this matter. If I do not hear from you, it is likely that formal court proceedings will be initiated to compel your compliance. I am hopeful that this can be avoided. Please contact me in my Payson office upon receipt of this letter.

Thank you.

Sincerely,



Michael J. Harper

UPS Tracking #:
12-784-06F-02-9577-8100

Certified/RRR #
7010-3090-0003-5552-2547

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,

Complainants,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.

Respondents.

DOCKET NO. W-03514A-12-0007

**ADMINISTRATIVE
SUBPOENA DUCES TECUM**

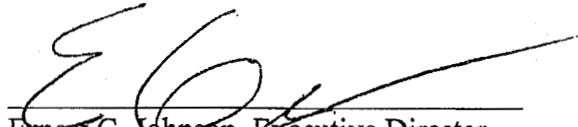
**TO: JIM PEARSON
PEARSON TRANSPORT/PEARSON WATER
P.O. Box 193
1120 Rodeo Rd.
Williams, Arizona 86046
(928) 635-4220; (928) 853-4755**

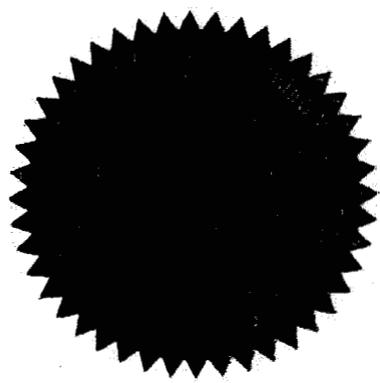
YOU ARE HEREBY COMMANDED, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109 and Ariz. R. Civ. P. 30 and 45 to appear at the **Hearing scheduled for August 7, 2012 at 10:00 a. m.** at the offices of the Commission, Hearing Room No. 1, 1200 West Washington St., Phoenix, Arizona 85007 and to produce and provide no later than Ten Days (10) after receipt of this Subpoena copies of the following documentation to the Complainant; J. Alan Smith; 8166 Barranca Road; Payson, Arizona 85541 in connection with the administrative proceedings in the above captioned action and as follows:

1. Any and all copies of the Books, papers, documents or other tangible things, Accounts, Water Hauling Invoices, Water Hauling Logs, Bills of Lading, Waybills, and other documents unedited and un-altered that have been billed to Brooke Utilities, Inc. and Payson Water Co. Inc. P. O. Box 8218; Bakersfield, CA 93380 according to Invoices issued by **Pearson Water Co.** for the hauling of water to the Water Systems of Mesa del Caballo, East Verde Park and any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Given under by hand the seal of the Arizona Corporation Commission this 14th day
of July, 2012


Ernest G. Johnson, Executive Director
Arizona Corporation Commission



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. Requests should be made as early as possible to allow time to arrange the
accommodation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned swears (or affirms) that he/she is qualified to serve this subpoena and that he/she did so by showing the original to and informing the witness of its contents and by delivering a copy thereof to him at 7:36 a.m./p.m. on July 25, 2012 **PEARSON WATER CO.**; at **1120 Rodeo Rd. Williams, Arizona 86046.**

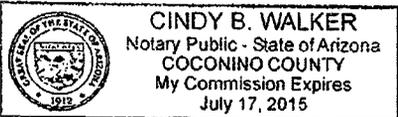
#W-03514A-12-0007

Debi Waskobojnik
Person Serving Subpoena
Debi Waskobojnik

Subscribed and sworn to before me on July 26, 2012

Cindy B Walker
Notary Public

July 17, 2015
My Commission Expires



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. Requests should be made as early as possible to allow time to arrange the accommodation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,

Complainants,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.

Respondents.

DOCKET NO. W-03514A-12-0007

**ADMINISTRATIVE
SUBPOENA DUCES TECUM**

**TO: JIM PEARSON
PEARSON TRANSPORT/PEARSON WATER
P.O. Box 193
1120 Rodeo Rd.
Williams, Arizona 86046
(928) 635-4220; (928) 853-4755**

YOU ARE HEREBY COMMANDED, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109 and Ariz. R. Civ. P. 30 and 45 to appear and testify under oath in connection with the administrative hearing in the above-captioned action.

BEFORE WHOM APPEARANCE TO BE MADE: Arizona Corporation Commission

DATE AND TIME OF APPEARANCE: August 7, 2012 at 10:00 a. m.

PLACE OF APPEARANCE: The offices of the Commission, Hearing Room No. 1, 1200 West Washington St., Phoenix, Arizona 85007

YOU ARE COMMANDED to appear and give testimony concerning: Your Companies activities and those of yourself and your employees or subcontractors during the Augmentation Period of May 2011 to October 2011 while hauling water to Augment the Mesa del Caballo Water System and other Water Systems owned and operated by Brooke Utilities, Inc. or Payson Water Co. Inc.

1 other Water System owned and operated by Payson Water Co. during Water Augmentation
2 period May 1, 2011 through October 31, 2011 inclusive of those billing periods and all those
3 Water Hauling Invoices, Water Hauling Logs, Bills of Lading, Waybills and other documents
4 associated therewith and described herein, including but not limited to the following:

- 5 a. Invoice Numbers 8803, 8804, 8805, 8806, 8807, 8808, 8809, 8810, 8811, 8812, 8813,
6 8814, 8815, 8816, 8817, 8818, 8819, 8820, 8821, 8822, 8823, 8824 and 8825 and any and
7 all of the **BUI HAULING LOGS** and your records associated with these invoices. They
8 shall be copies of the originals un-altered and un-edited in any way;
- 9 b. Copy of any contract between Pearson Water Co. and Payson Water Co. or Brooke
10 Utilities Inc. to haul water from any location to any other location and particularly from
11 any location to any of the Water Systems owned and operated by Payson Water Co.
- 12 c. Disclose the locations of where any amount of water was acquired and hauled from
13 whether it was the Town of Payson or any other source to the East Verde Park Water
14 System or any other location during the Augmentation Period of May 2011 to October
15 2011;

16 **YOU HAVE BEEN SUBPOENED BY: J. Alan Smith**

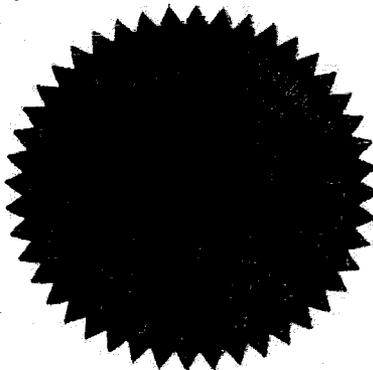
8166 Barranca Rd.

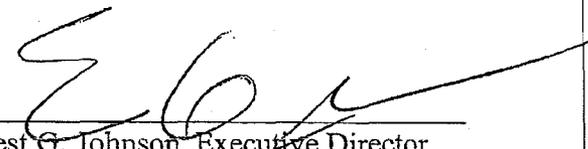
Payson, Arizona 85541

Telephone: (928) 951-2083

17 **DISOBEDIENCE OF THIS SUBPOENA** constitutes contempt of the Arizona Corporation
18 Commission and may subject you to further proceedings and penalties under law, pursuant to A.R.S.
19 § 40-424.

20 Given under by hand the seal of the Arizona Corporation Commission this, 19th day
21 of July, 2012.



22 
23 Ernest G. Johnson, Executive Director
24 Arizona Corporation Commission

25
26
27 2

28 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. Requests should be made as early as possible to allow time to arrange the
accommodation.

1
2 **CERTIFICATE OF SERVICE**

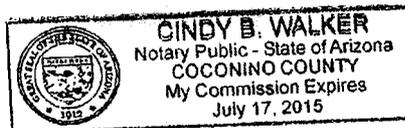
3 The undersigned swears (or affirms) that he/she is qualified to serve this subpoena and that he/she
4 did so by showing the original to and informing the witness of its contents and by delivering a copy
5 thereof to him at 7:36 a.m./p.m. on July 25, 2012 **PEARSON WATER CO.**; at
6 **1120 Rodeo Rd. Williams, Arizona 86046.**

7 #W-03514A-12-0007 Debi Waskobojnik
8 Person Serving Subpoena
9 Debi Waskobojnik

10 Subscribed and sworn to before me on July 26, 2012

11 Cindy B Walker
12 Notary Public

13 July 17 2015
14 My Commission Expires



28 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. Requests should be made as early as possible to allow time to arrange the accommodation.



United States

Home Shipping Tracking Freight Mailboxes Retailer UPS Solutions

Shipping

Create a Shipment

- [View History](#)
- [Create a Shipment](#)
- [Create an Account](#)
- [Send a Package](#)
- [Track a Package](#)
- [Get a UPS Label](#)
- [Print a UPS Label](#)
- [Use International Tracking](#)
- [Order Supplies](#)
- [Use UPS Address](#)
- [Get Packages](#)

UPS Live Chat
 Hours of Operation
 8:00 - 8:00ET Mon-Fri
[Chat Now](#)

Create A Shipment

Package Freight

Review Your Shipment Details

The residential or commercial designation for this address has been changed based on UPS delivery records and may have changed the total charges for this delivery.

Please review your shipping information for accuracy. Select Edit to modify information.

1 Address Information

Ship To: Edit Pearson Transport/Pearson Water Jim Pearson 1120 Rodeo Road WILLIAMS AZ 860469522 Residential	Ship From: Edit Walker & Harper PC Dianamarie L. Maione 111 West Cedar Lane Ste. C PAYSON AZ 85541 Telephone:928-474-9230	Return Address: Edit Walker & Harper PC Dianamarie L. Maione 111 West Cedar Lane Ste. C PAYSON AZ 85541 Telephone:928-474-0322
---	--	---

2 Package Information

Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1. Letter	UPS Letter		Reference#1 - MJH-2012-S-226 Reference#2 - Smith-ACC Dispute

3 UPS Shipping Service and Shipping Options

Service: UPS 2nd Day Air [Compare Item and Cost](#)

Do you need it there sooner?

<input checked="" type="radio"/> UPS 2nd Day Air	currently selected	
<input type="radio"/> UPS Next Day Air	7.49 more	No later than end of day Tuesday, Nov 6, 2012

Do you wish to offset the climate impact of this shipment?

Select Update to include [UPS carbon neutral](#)

Shipping Fees Subtotal:

20.03 USD

Additional Shipping Options

Quantum View Notify E-mail Notifications: [Edit](#) [Cancel](#) No Charge
1 dianamarie@walkerharper.com: Ship, Exception, Delivery

Payment Information

Bill Shipping Charges to: Shipper's Account Y8406F

Daily rates were applied to this shipment

Total Charged: 20.03 USD

By selecting the Ship Now button, I agree to the [Terms and Conditions](#).

[Cancel Shipment](#) [Ship Now](#)

Note: Your invoice may vary from the displayed reference rates.
If you require additional information, select Contact UPS below.

Subscribe to UPS E-mail [View Email Preferences](#) [View Help/FAQ](#)

[Sign Out](#)

CERTIFIED MAIL



7010 3090 0003 5552 2547
7010 3090 0003 5552 2547



alker & Harper, PC
ATTORNEYS AT LAW

erson Office:
1 W. Cedar Lane, Suite C
son, AZ 85541

Water

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.65	Postmark Here
Certified Fee	2.95	
Return Receipt Fee (Endorsement Required)	2.35	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.95	

Sent by: **Jim Pearson**
Street or PO: **Pearson Transport/Pearson Water**
City, S: **P.O. Box 193**
PS Form: **Williams, AZ 86046**

Dianamarie Maione

From: UPS Quantum View [auto-notify@ups.com]
Sent: Tuesday, November 06, 2012 11:12 AM
To: dianamarie@walkerharper.com
Subject: UPS Delivery Notification, Tracking Number
1ZY8406F0295778100

***Do not reply to this e-mail. UPS and Walker & Harper PC will not receive your reply.

At the request of Walker & Harper PC, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1ZY8406F0295778100
Delivery Date / Time: 06-November-2012 / 10:49 AM

Driver Release Location: FRONT DOOR

Shipment Detail

Ship To:
Jim Pearson
Pearson Transport/Pearson Water
1120 E RODEO RD
WILLIAMS
AZ
86046
US

Number of Packages: 1
UPS Service: 2ND DAY AIR
Shipment Type: Letter
Reference Number 1: MJH-2012-S-226