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DOCUMENT TRANSMITTAL

DATE: June 7, 2013

TO: Arizona Corporation Commission
Attention: Docket Control
1200 W Washington St
Phoenix, AZ 85007

W-03514A-12-0007

FROM: Michael J. Harper

RE: SMITH-V-PAYSON WATER CO., INC., ET AL, OUR FILE MJH-2012-S-226

Enclosed please find ORIGINAL and thirteen (13) plus one (1) copies of *Renewed Motion to Compel documents and Information Requested by Subpoena and Data Requests, and Motion for Order Requiring Jim Pearson to Fully Respond to Subpoena Duces Tecum, and Request for Hearing on Motions* with regard to the above-captioned matter.

Kindly acknowledge your receipt of this mailing by marking the extra copy and returning same in the self-addressed stamped envelope enclosed within for your convenience.

Arizona Corporation Commission
DOCKETED

JUN 10 2013

DOCKETED BY 

Sincerely,

WALKER & HARPER, P.C.



Dianamarie L. Maione for
MICHAEL J. HARPER, ESQ.

/dmm
Enclosure(s) as Noted

ORIGINAL

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9 Attorneys for J. Alan Smith

10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 J. ALAN SMITH,

NO. W-03514A-12-0007

12 Complainant,

13 v.

**RENEWED MOTION TO
COMPEL DOCUMENTS AND
INFORMATION REQUESTED BY
SUBPOENA AND DATA
REQUESTS**

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

16 Respondent.

And

**MOTION FOR ORDER
REQUIRING JIM PEARSON TO
FULLY RESPOND TO SUBPOENA
DUCES TECUM**

And

**REQUEST FOR HEARING ON
MOTIONS**

17 **RENEWED MOTION TO COMPEL**

18 Complainant, through undersigned counsel, hereby renews his request for materials
19 which have been properly requested from the Respondent, but which the Respondent continues
20 to refuse to provide. All of the document requests listed below were referenced in
21 Complainant's Motion to Compel dated March 15, 2013. As of this date, the documents
22 described below still have not been produced.

23 **August 2, 2012 Subpoena**

24 This Subpoena requested the following documents which remain outstanding:

- 25 *a.* Any and all copies of the Books, papers, documents or other tangible

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

- b. Invoice Numbers 8805, 8806, 8809, 8810, 8813, 8814, 8817, 8818, 8820, 8821 and 8824 and any and all of the **BUI HAULING LOGS** and your records associated with these invoices. They shall be copies of the originals un-altered and un-edited in any way;
- c. Copy of any contract between Pearson Water Co. and Payson Water Co. or Brooke Utilities Inc. to haul water from any location to any other location and particularly from any location to any of the Water Systems owned and operated by Payson Water Co.
- d. Disclose any and all locations of where any amount of water was acquired and hauled from whether it was the Town of Payson or any other source to the East Verde Park Water System or any other location during the Augmentation Period of May 2011 to October 2011.

August 17, 2012 Subpoena

The following requests included in the August 17, 2012 Subpoena have not been responded to:

- 1. Provide Copy of Mr. David Allred's Certification as a Class 4 Water Operator.
- 2. Provide Copy of the Water Sharing Agreements that Brooke Utilities, Inc. and Payson Water Co. entered into with the following Well Owners to supplement the MDC System:
 - a) El Caballo Club;

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- b) Lisa and Ben Harmon;
- c) John Olson;
- d) Mary Hansen;
- e) 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.

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2 8. Provide copy of Payson Water Co. CC&N (Certificate of Convenience and
3 Necessity).

4 **July 16, 2012 Data Requests**

5 Complainant seeks responses to the inquiries quoted below, all of which were included in
6 his July 16, 2012 Data Requests:

7 **1.0.2.1:** If the Customer is allowed only 97 gallons per day, then over a
8 30 day period that equals 2,910 gallons. Under what part of the Curtailment Plan
9 do you derive the authority to shut my water off for using 4,000 gallons a month,
10 (30) days that is equal to 133.33 gallons per day?

11 **1.0.2.2:** Produce copy of the check from Brooke Utilities, Inc. or Payson
12 Water Co. Inc. to reimburse the Customer.

13 **1.1.2:** Can you explain why certain documentation submitted by you and
14 by Mr. Gehring in Mr. Gehring's and the Jones Complaint at the Hearing on June
15 26 and 27, 2012 confirm beyond any reasonable doubt that water was hauled to
16 the East Verde Park System and billed to your Customers in the Mesa del Caballo
17 System?

18 **1.1.3:** Can you explain why there was an average daily surplus of water
19 in the amount of 8,731 gallons per day during the entire Augmentation period of
20 2011 and why hauling water was even necessary?

21 **1.1.4:** How much water was actually hauled to the East Verde Park
22 System during the Augmentation Period of 2011?

23 **1.1.5:** Provide copy of the Contract or Agreement between Payson Water
24 Co. Inc. or Brooke Utilities, Inc. and Pearson Water Co. to haul water to
25 supplement or augment any of the Payson Water Co. Inc. Systems.

26 **1.2:** According to your Well Production Reports for 2009 through 2011
27 and the corresponding worksheets produced by Mr. Gehring, Mr. Burt and myself
28 that were submitted as evidence in Docket No. W-03514A-12-0008 at the
Hearing of June 26 and 27, 2012 during the "Augmentation Billing Period" your
wells and the Water Sharing Agreement wells produced 6,106,080 gallons which
your own evidence confirms and according to your documents submitted in
evidence at the Hearing the "Revised Consumption" of the MDC System was
5,345,294 gallons. The difference being that there existed an 824,231 gallon
Surplus of water throughout the entire 2011 "Augmentation Billing Period."

1.2.1: Do you have a massive leak in the Mesa del Caballo System that
you have neglected or refused to repair?

1.2.2: Did you or Mr. Allred instruct Pearson Water Co. and its owner
and employees to haul water out of the MDC System to other locations?

1.2.3: Can you produce any evidence that the hauling of 701,900 gallons
of water to the MDC System during the 2011 Augmentation Period was even

1 necessary? If so, please produce it?

2 **1.2.6:** Produce and provide all documentation that a water shortage in the
3 MDC system has increased since 2005 where you were granted an economic
penalty to impose on Customers of the MDC system.

4 **1.3:** In 2010 as part of the Curtailment Tariff you persuaded the
5 Commission to increase the economic penalty for various Stage Violations.
6 Please provide any documentation that supports a justification to impose any
economic sanctions on the Customers of the MDC system for failure to comply
with Stages 3 through 5.

7 **1.4:** Please provide documentation and accounting for all Curtailment
8 Tariff Fines and Reconnection Fees used to offset the purchase and hauling of
water for the years 2009, 2010 and 2011.

9 **1.5:** Please provide documentation that would justify keeping the entire
10 Community of MdC at a Stage 3 level from May of 2009 until November of 2011
and provide proof that your public notices were given and posted for any other
11 stage during that period.

12 **1.6:** Referencing the PWC 2009 MDC system Annual Report. That report
13 shows that PWC sold 17,346,000 gallons. The total water purchase and the
14 pumped water show 16,570,800 gallons. Provide the documentation and the
accounting method used to sell more water (775,200 gallons) than you pumped
and purchased from Water Sharing Agreement Wells or any other source.

15 **1.6.1:** Please provide the accounting method used to show the difference
between purchased water and hauled water.

16 **1.7:** Referencing the PWC 2010 MDC system Annual Report. That report
17 shows that PWC sold 14,714,000 gallons. The total water purchased and pumped
18 show 15,172,000. Please provide the documentation and the accounting method
used to purchase and produce more water (458,000 gallons) than you sold;
19 explain the surplus via worksheet; and why BUI/PWC had to haul water to the
MDC System during 2010.

20 **1.7.1:** On page 8 under Comparative Statement of Income and Expense
21 Item "Acct. No. 610" Purchased Water shows a total water purchase of
\$24,322.00. Provide a worksheet of the "Hardcastle Method" to haul water when
well production exceeded gallons sold.

22 **1.7.2:** On page 8 under Comparative Statement of Income and Expense
23 Item "Acct. No. 675" Miscellaneous Expense" please provide an explanation of
24 that expense and please explain what is meant by Non-System Expenses and what
those expenses are for?

25 **1.8:** Provide a detailed management guideline by BUI/PWC that is used to
26 monitor water levels of the MDC System for the sole purpose of moving from
Stage 1 thru any other Stage and back again.

27 **1.8.1:** Provide a detailed management guideline by BUI/PWC that is used
in conjunction to haul water in the event that the system goes into Stage 3 thru 5.

28 **1.8.2:** Provide a detailed management guideline by BUI/PWC that is used

1 to stop the hauling of water.

2 **1.8.3:** Provide a copy of all phone calls, emails, records or contact with
3 Pearson Water Co. by any of BUI or PWC agents or employees particularly Mr.
4 David Allred for the dispatch of water tankers to haul water to the various
5 systems needing Augmentation for the Augmentation Period between May and
6 October 2011.

7 **1.9:** Provide all records or documents of any verbal agreements or written
8 contracts between BUI or PWC and Pearson Water Co. for the specific purpose of
9 hauling water for Payson Water Co. Inc. Water Systems.

10 **1.10:** Please explain why, your Annual Reports for 2010 and 2011 show
11 no water purchases for the EVP System or other Systems and only to the MDC
12 System when in fact water was hauled to the EVP System in both of those years.

13 **1.10.1:** Please produce a copy of the "Water Use Data Sheet by Month
14 for Calendar year 2011" for the Mesa del Caballo System and explain why it was
15 left out of PWC's Annual Report?

16 **1.12:** Upon PWC's application to the ACC for approval of a Water
17 Augmentation Surcharge Tariff you submitted various Invoices from Pearson
18 Water Co. for the hauling of water from distant locations including Indian Creek,
19 Tonto, Starlight, Gisela to Mesa del Caballo and East Verde Park.

20 **1.12.1:** Please produce documentation confirming the exact locations and
21 name of the Systems where water was obtained from Indian Creek, Tonto,
22 Starlight and Gisela and explain why you hauled water from such distant
23 locations instead of from your Star Valley System or the Town of Payson.

24 **1.12.2:** Please provide record of total costs to haul water just to the MDC
25 System for the years 2009 through 2011?

26 **1.12.3:** Pearson Water Co. charges \$150.00 per hour to haul while other
27 Transport Companies charge \$80.00 to \$85.00 per hour. Has the Company tried
28 to contact other Transport Companies to get better rates? If not, why not?

1.13: Provide a full and complete Copy of your Emergency Procedures
Manual.

1.14: Provide copy of the notice presented to the Company by the ACC to
turn the Complainant's water back on and provide an explanation as to why you
or the Company refused to turn it back on.

1.14.2: At what time on June 6, 2011 was water hauling initiated during
Stage 3?

1.15: Who is responsible for the collection of fines and their disperse or
application to offset Water Augmentation costs, who is responsible for the
refunds of fines and provide identification of the "interest bearing trust account"
set up by the Company to collect and disperse the funds. Provide proof that such
funds were dispersed to off set Augmentation Costs.

1.15.1: Do the costs to haul water between 2009 and 2011 exceed the
actual and un-inflated cost to drill a well 400 to 900 feet?

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2 **1.16:** Provide documentation that the Aquifer under Mesa del Caballo is
3 inadequate to maintain water for the Customers of Payson Water Co. Inc. MDC
4 System.

5 The information described above is critical to the Complainant's ability to prepare for
6 a final hearing in this matter. Despite appropriate requests to the Commission and to
7 Respondent, Complainant has not been able to secure this information. Complainant respectfully
8 requests that this Motion be set for a hearing at which time orders can be requested relating to the
9 provision of the evidence requested.

10 **MOTION FOR ORDER DIRECTING FULL COMPLIANCE WITH**
11 **SUBPOENA TO JIM PEARSON**

12 On April 12, 2013, Robin Mitchell filed a Status Update which addressed the
13 response submitted by Jim Pearson to the Subpoena which was the subject of the Commission's
14 recent order compelling compliance. That Status Update reports that Mr. Pearson told Ms.
15 Mitchell that he had "misplaced some of the relevant documents" and was "undertaking an effort
16 to locate them." It also states that Mr. Pearson was "advised to cooperate and contact Mr. Smith
17 or Mr. Smith's attorney."

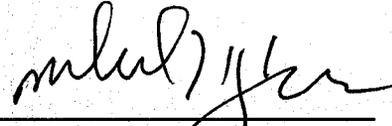
18 Since that time Mr. Pearson has not contacted Mr. Smith or his counsel. Nor has he
19 provided any documents whatsoever in response to the Subpoena. In his handwritten response
20 attached to the Status Update Mr. Pearson stated that he was "still looking" for the highly
21 relevant invoices and water hauling logs requested. But again, nothing has been produced.

22 Complainant requests an order requiring Mr. Pearson to fully and finally comply with
23 the Subpoena by producing all documents in his possession, including any documents that he
24 may have uncovered since he provided his handwritten response. Complaint requests that this
25 issue be addressed at the time of a hearing on the Motion to Compel requested above.
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DATED: June 7, 2013.

WALKER & HARPER, PC



Michael J. Harper
Attorney for J. Alan Smith

1 ORIGINAL and 13 copies mailed for filing
2 this 7th day of June, 2013 to:

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

7 and copies mailed on the same date to:

8 Dwight Nodes, Administrative Law Judge
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