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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 COMMISSIONERS

- 3 MIKE GLEASON, Chairman
- 4 WILLIAM A. MUNDELL
- 5 JEFF HATCH-MILLER
- 6 KRISTIN K. MAYES
- 7 GARY PIERCE

2008 DEC 17 P 1:44

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

DEC 17 2008

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7 IN THE MATTER OF THE APPLICATION OF
 8 PINE WATER COMPANY FOR APPROVAL TO
 9 (1) ENCUMBER A PART OF ITS PLANT AND
 SYSTEM PURSUANT TO A.R.S. §40-285(A);
 AND (2) ISSUE EVIDENCE OF INDEBTEDNESS
 PURSUANT TO A.R.S. §40-302(A).

DOCKET NO. W-03512A-07-0362

PROCEDURAL ORDER

10 **BY THE COMMISSION:**

11 On June 11, 2007, Pine Water Company (“PWC” or “Company”) filed with the Arizona
 12 Corporation Commission (“Commission”) an application seeking approval to (1) encumber a part of
 13 its plant and system pursuant to A.R.S. §40-285(A); and (2) issue evidence of indebtedness pursuant
 14 to A.R.S. §40-302(A).

15 The Company’s application is related to a Joint Well Development Agreement (“Well
 16 Agreement”) entered into between PWC and the Pine-Strawberry Water Improvement District
 17 (“PSWID”). According to the application, the Well Agreement provides, among other things, that
 18 PWC would enter into a contingent indebtedness with PSWID in the amount of \$300,000, for costs
 19 related to drilling a deep well at the K2 well site, and that PWC’s assets would be encumbered in a
 20 like amount.

21 A hearing was held on December 12, 2007, and post-hearing briefs and reply briefs were filed
 22 on February 15 and February 29, 2008, respectively.

23 On September 5, 2008, a Recommended Opinion and Order was issued and this matter was
 24 scheduled for discussion at the Commission’s September 23 and 24, 2008, Open Meeting.

25 During the September 23, 2008, Open Meeting discussion, the Commission passed a Motion
 26 offered by Commissioner Mayes, as amended by Commissioner Mundell, to postpone further
 27 consideration until the December 16 and 17, 2008, Open Meeting. The Commission directed the
 28

1 Hearing Division to issue a Procedural Order directing the parties to submit additional information
2 prior to the December Open Meeting. The Motion passed by the Commission required the parties to
3 file a report regarding the status of any purchase negotiations or condemnation efforts, and any other
4 developments or pertinent information in this case.

5 On September 29, 2008, a Procedural Order was issued directing the parties to file a report
6 consistent with the Commission's directive by no later than December 12, 2008.

7 On October 15, 2008, PWC filed a letter to the Company from counsel for the PSWID
8 regarding a public records request.

9 On October 20, 2008, the PSWID and intervenors Fred Krafczyk and Michael Greer
10 ("Intervenors") filed a letter sent by PSWID's counsel to PWC related to a dispute between the
11 parties regarding the Well Agreement.

12 On October 22, 2008, Chairman Gleason filed a letter to the parties in the docket requesting
13 that the report filed by December 12, 2008, include answers to two specific questions.

14 On October 24, 2008, the Company filed a letter sent to the PSWID regarding a demand for
15 arbitration under the terms of the Well Agreement.

16 On November 6, 2008, the PSWID and Intervenors filed a letter in response to Chairman
17 Gleason's questions.

18 On November 24, 2008, PWC filed a Notice of Withdrawal requesting that this docket be
19 closed because the relief sought in the application is no longer necessary.

20 Also on November 24, 2008, PWC filed a letter in response to Chairman Gleason's October
21 22, 2008, letter.

22 On December 4, 2008, the Intervenors filed a response in opposition to PWC's Notice of
23 Withdrawal.

24 On December 9, 2008, PWC filed a Reply to Intervenors' Opposition to the Notice of
25 Withdrawal.

26 On December 11, 2008, the PSWID and Intervenors filed their Report Regarding Acquisition
27 of Pine and Strawberry Water Companies by the PSWID. A Supplement to the Report was filed on
28 December 12, 2008.

1 On December 12, 2008, PWC filed its Status Report in compliance with the September 29,
2 2008, Procedural Order.

3 Through the various pleadings filed in this docket, the parties indicated that a condemnation
4 lawsuit has been filed by the PSWID in Gila County Superior Court through which the PSWID seeks
5 to acquire the assets of the Pine and Strawberry Water Companies. Also, as described above, PWC
6 seeks a binding arbitration decision regarding its breach of contract allegation against the PSWID
7 with respect to the Well Agreement.

8 This matter was scheduled for consideration on the Commission's December 16, 2008, Open
9 Meeting agenda. During the Open Meeting discussion, the Commission passed a Motion to Stay this
10 proceeding and directed the Hearing Division to issue a Procedural Order in accordance with the
11 Motion. Specifically, the Commission's Motion directed that:

12 This proceeding shall be stayed and the parties shall be required to file
13 status reports every three months, until further order by the Commission,
14 regarding the condemnation action, the pending arbitration, and any other
15 pertinent information related to this matter. The parties are further
16 required to file a report within ten days of the issuance of a decision in the
arbitration matter. Finally, the Company's Notice of Withdrawal shall be
denied.

17 IT IS THEREFORE ORDERED that the Intervenors and Pine Water Company shall file by
18 March 16, 2008, and every three months following by the 15th of the month, a status report regarding
19 the condemnation action, the pending arbitration, and any other pertinent information related to this
20 matter. The quarterly status report requirement shall stay in effect until further order of the
21 Commission. Notwithstanding the quarterly report requirement, the parties are also directed to file a
22 report within ten days of the issuance of a decision in the arbitration matter.

23 IT IS FURTHER ORDERED that Pine Water Company's Notice of Withdrawal is denied.

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

4 DATED this 17th day of December, 2008.

6 

7 DWIGHT D. NODES
8 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE


9 Copies of the foregoing mailed/delivered
10 this 17th day of December, 2008 to:

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