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2008 NOV 24 P 4: 07

Arizona Corporation Commission

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE APPLICATION  
 9 OF PINE WATER COMPANY FOR  
 10 APPROVAL TO (1) ENCUMBER A PART  
 11 OF ITS PLANT AND SYSTEM  
 12 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

**PINE WATER COMPANY'S NOTICE OF WITHDRAWAL**

13 Pine Water Company ("PWCo") hereby notifies the Arizona Corporation  
 14 Commission ("ACC") that it withdraws its pending application in this docket and  
 15 currently does not seek approval to (1) encumber a part of its plant and system pursuant to  
 16 A.R.S. § 40-285(A) and (2) issue evidence of indebtedness pursuant to A.R.S. § 40-302(A)  
 17 relating to the Joint Well Development Agreement ("JWDA") between PWCo and the  
 18 Pine-Strawberry Water Improvement District ("District") dated May 1, 2007. The reason  
 19 for PWCo's withdrawal of the pending application is that approval of the pending ACC  
 20 application in this docket is not necessary at this time.

21 As PWCo has stated throughout this case, the relief sought in this docket is not  
 22 necessary for PWCo to perform its obligations under the terms of the JWDA. Rather,  
 23 PWCo filed the pending application out of an abundance of caution and because approval  
 24 to encumber an asset that was to be built in the future originally was required by the  
 25 District as a pre-condition to deposit of the \$300,000 in escrow under ¶ 4.2.1.1 of the  
 26 JWDA. After executing the JWDA, however, the District waived that requirement and

1 deposited that money in escrow, which means that approval of the encumbrance is no  
2 longer needed per the terms of the JDWA.

3 Further, the requested financing approval allowing PWCo to issue evidence of  
4 indebtedness in favor of the District pursuant to A.R.S. § 40-302(A) is not ripe under the  
5 terms of the JWDA. Under ¶ 4.2.2 of the JWDA, PWCo is required to refund the  
6 \$300,000 provided by the District for the K2 well in “36 equal monthly payments with the  
7 first payment due the first day of the month immediately following entry of an ACC  
8 Decision recognizing the Project as used and useful and including in rate base for rate  
9 making purposes.” Thus, until the K2 Project is constructed *and* the ACC issues a  
10 decision putting the K2 project in PWCo’s rate base, PWCo will not have any payment or  
11 refund obligations to the District and the requested issuance of indebtedness is not ripe or  
12 necessary.

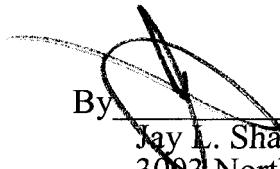
13 Finally, the District recently attempted to terminate the JWDA, and the District has  
14 refused to perform its obligations under the JWDA. In turn, PWCo filed arbitration  
15 claims against the District for breach of the JWDA and unlawful, bad-faith termination.  
16 PWCo seeks damages and specific performance of the JWDA. PWCo and the District  
17 have an arbitration hearing scheduled for February 2009 to resolve these issues relating to  
18 the JWDA. As a result, the District’s actions in purporting to terminate the JWDA and  
19 refusing to perform have rendered ACC approval of the application in this docket  
20 unnecessary.

21 For these reasons, PWCo respectfully requests that the Administrative Law Judge  
22 issue an order acknowledging PWCo’s withdrawal of the pending application in this  
23 docket, and directing administrative closure of this docket.

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DATED this 24th day of November, 2008.

FENNEMORE CRAIG, P.C.

By   
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**ORIGINAL** and thirteen (13) copies of the foregoing filed this 24th day of November, 2008:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007


**COPY** of the foregoing hand-delivered this 24th day of November, 2008:

Mr. Dwight D. Nodes  
Assistant Chief Administrative  
Law Judge  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

**COPY** of the foregoing mailed and e-mailed this 24th day of November, 2008 to:

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