

Hello Neighbor,

Lots of things have been going on.

May 21, 2009 PSWID Meeting

Next regular PSWID Meeting: Thursday June 18, 2009 7:00 PM at the Pine Cultural Center

1. Immediate Possession on Hold

- The following statement is on the PSWID website:
“Because of a number of technical and logistic issues, the District will not be taking immediate possession of the Pine and Strawberry water systems on May 22nd as had been previously announced. Some of the issues include the filing of a legal motion to intervene in the transaction by a third party, questions and issues concerning the condition of the water systems, and an unwillingness to fund the transfer by the District's financial institution because of the uncertainties related to the above.
However, the District and the Water Companies have continued a dialog and both are working to try and reach an agreement satisfactory to both the District and the Companies.”
- At the meeting the board made the following points:
 - There were water system issues that made them hesitant to take control going into a holiday weekend.
 - The filing of the intervention raised a lot of issues. They don't know if the claim is legitimate and the condemnation can't move forward.
 - The bank won't lend them the money because there is too much uncertainty about whether they can recover their money if the condemnation falls through.
 - Mr. Haney gave his personal speculation that they may not get control of the water companies this summer.
- Comment: The fundamental issue here is the money. PSWID promised that they could have the money by the 22nd and came up short. If I were a banker there would be a couple of things that would be making me nervous about the safety of my money. The first is that there isn't a final price determined for the water companies. A couple of years from now a price could come in that is more than PSWID has available. At that point, the bank would either be forced to lend more money or PSWID would have to walk away from the condemnation and there would no longer be any collateral or revenue to service the loan. The other thing that would be making me nervous is whether PSWID can operate the water system competently enough to be able to service the loan. As an item further down in the email talks about, PSWID did not ask for enough information from Brooke to allow them to bill customers. Chaos in revenue collection would not make me feel good about getting loan payments. In addition, it isn't clear whether PSWID has the staff and equipment necessary to assume operations since there is not an operations company signed up.
- Comment: So what might happen next? There are a couple of possibilities:
 - Brooke could file to have the condemnation declared a failure. If that is successful, it would prevent PSWID from trying to condemn the water companies for several years and allow Brooke to recover their costs related to this condemnation attempt from PSWID. Brooke has been pretty

consistent over the last year in that they don't want to deal with PSWID if there is no money to back it up.

- If the roadblock to the money is the lack of a final price, then PSWID and Brooke would need to negotiate that now rather than through litigation. All attempts to do that have been unsuccessful to this point.
- If the roadblock is something else, then perhaps they can work through it with some more time.
- The board also stated that Brooke had not provided sufficient information to allow them to bill customers. The board said that billing names and addresses of customers had been supplied, but not the meter location or rate structure information that apply to those customers. In later statements, Brooke said that they have provided all of the information required by the stipulation. The stipulation says that Brooke will provide the following:
 - (a) lists of their customers with names and addresses;
 - (b) maps of the systems;
 - (c) meter read dates and accounts receivable information;
- The court order for the stipulation can be read here: <http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm>.
- Comment: Based on the wording in the stipulation, it looks like Brooke met the letter of what was asked for, a list of customer names and addresses. When lawyers are involved in an acrimonious situation, you have to carefully describe everything that you are going to need provided to you. PSWID should have clearly spelled out the information they were going to need for billing purposes. This is a major mistake on the part of PSWID. It is going to be very difficult for PSWID to come up with this information on their own.
- The Payson Roundup article can be found here: http://www.paysonroundup.com/news/2009/may/22/water_company_take_over_pswid_stopped/
- Brooke filed a motion with the ACC in which Brooke indicated that PSWID had informed them on May 13th that they would not be able to provide the \$3.2 million. The motion was a request to hold off on Brooke providing financial information to the ACC since the water companies were expected to be acquired. The motion can be viewed here: <http://www.waterforpinestrawberry.com/data%20pages/RateCaseDocs.htm>

2. Intervention By Mr. Gary Rogers

- Mr. Rogers was kind enough to talk about the reasons for the intervention and to provide documentation on the chain of events with regard to ownership of the well on his property.
- Mr. Rogers had this to say: "The condemnation action came as a surprise, not that they were planning to do it, but that it was actually going to happen. I consulted with our lawyers we'd engaged a while back, and we felt that the issue needed to be cleared up BEFORE PSWID took over the water companies. I had contacted Harry Jones who assured me that it was not their intention to take my well, however, our lawyer, who had contacted John Gleige, found out that the wording of the condemnation action was sufficiently broad enough to include the well, even though it was not specifically on the list of Brooke assets. Of course the confusion caused by the wrong well numbers could have been another loophole as well. Once we found out that PSWID's

intention was to deal with our well AFTER they had taken possession of all of Brooke's assets "used and useful for water production" within the CC&N, which obviously would have included our well, we figured it would then be REALLY difficult regaining possession of it. So that's why the intervention was filed."

- Mr. Rogers has spent several years trying to regain control of the well on his property. He has provided an extensive history which can be viewed here: <http://www.waterforpinestrawberry.com/data%20pages/MiscPSWIDDocs.htm> . In summary the history of the well is:
 - Two wells were drilled on the property in 1986. The first was 432 feet with registration number 55-513432. This well didn't produce, so a second well of 856 feet was drilled with a registration number of 55-513856.
 - The owner of the property at the time that the wells were drilled was Sundance Development Company (SDC). SDC defaulted on tax payments in 1996 and Mr. Marion Rogers purchased the property in a tax lien sale in 2001. Mr. Gary Rogers and his two sisters inherited the property in 2006.
 - The well was originally meant to be fed into the local water company grid and be used as an exchange for water needed for a development further south. SDC went bankrupt in 1987 and the water exchange deal never took place. During the period between then and when Mr. Marion Rogers acquired the property, it appears that the water company had a well go dry, so the unused well was connected to the water system, had a pump installed, and the registration number of the failed well was applied to this one. The Rogers have been trying to get the pumping stopped since they acquired the property.
 - Currently the well is being identified by Brooke with an incorrect well registration number. Mr. Roger's description of the well and surrounding well registrations shows that there is a lot of confusion with regard to how the wells are identified in that area.
- The motion for intervention and the answer to the condemnation complaint filed by Mr. Rogers can be viewed here: <http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm> .

3. Rate Hearing

- The board approved an initial set of rates that match the current rates for Pine and Strawberry, with the only exception being how water hauling charges are dealt with.
- Water hauling charges were extended to Strawberry customers, as was decided in the May 12th meeting.
- There was a great deal of discussion on how best to charge for hauled water. There was a lot of interaction with the attending members of the public on what the best way to do that would be. The suggestions boiled down to:
 1. Charge based on usage. This would be similar to how it has been done in the past. It has the advantage that it provides an economic incentive to conserve, but it lets the low usage weekenders off the hook for the spike in consumption that they contribute too.
 2. Charge an equal amount to each meter. This would spread the cost to the weekenders, but doesn't provide an incentive to conserve.

3. Consider it a cost of doing business and build it into the budget. This would be the best approach if water hauling costs were predictable or small in comparison to the overall budget. With this approach, a summer like 2007 would be a budget buster.
 - The board's final decision is that 50% of the cost of water hauling will be recovered based on usage in the same month and 50% of the cost of water hauling will be recovered by a per meter charge. This way, weekenders will shoulder more of the burden and there is still a financial incentive to conserve.
 - Comment: Given the short time frame for setting the rates, leaving them the same as the current rates is a reasonable thing to do. The preliminary Economists.com rate analysis contains errors which make the conclusion that rates won't have to be changed for two years unsupportable. Added to that is that the board is borrowing \$2 million more than the analysis assumed. It is certainly not possible that they can avoid a rate increase, at least not without using property tax receipts or part of the borrowed money to subsidize the operational losses. Economists.com owes the board an updated rate analysis. When asked, the board was non-committal as to when that will be provided.
 - Comment: The question was asked about what the board's intent is towards the maintenance of usage restrictions and the meter moratorium. Their answer was non-committal to that question as well. It would seem to be reasonable to leave those in place through the summer. Come fall, if there is a high probability of having additional water supply for the summer of 2010, then begin issuing new meters at some manageable rate. The ability to have usage restrictions should probably stay in place through the summer of 2010 to make sure the system can support the community with the new water sources on-line.
4. Water Hauling Myths
 - During the water hauling charge discussion, one of the central water hauling myths was repeated by a board member. That myth is that water was pumped from Pine to Strawberry during the summer of 2007 so that Pine residents paid for water hauled to supply Strawberry.
 - The myth started with a deposition of a former Brooke employee, Mr. James Bossert. The deposition was crafted by Mr. Gliege and Mr. Pugel to ask whether or not water was pumped from Pine to Strawberry in the summer of 2007 and not ask why it was pumped. This deposition was made public prior to the recall election.
 - Mr. Bossert later gave a deposition to Brooke's attorneys where the reason why water was pumped from Pine to Strawberry was given. Rather than run the trucks all the way up the hill with the water being hauled for Strawberry, it was deposited in the large tank at the north-west end of Pine and was pumped the rest of the way to Strawberry. This deposition was given after the recall election.
 - The two depositions can be found here:
<http://www.waterforpinestrawberry.com/data%20pages/MiscPSWIDDocs.htm>
 - Comment: The first deposition was made public shortly before the recall election and was used by Mr. Pugel and his Rim Country Water surrogates to make the claim that Brooke was charging Pine for water hauled for Strawberry. Oddly

enough, Mr. Pugel and Rim Country Water have never publicly addressed the second deposition.

5. Board Held A Special Meeting on May 18th

- The meeting consisted entirely of an executive session and they made no public statements.
- The interesting part of the meeting occurred outside. Mr. Pugel was a bit irate about the last email and the statement in there that Mr. Pugel had told others that acquiring the water companies is one piece of a larger plan. He strenuously denied that he has any plan beyond gaining control of the water companies.
- Comment: I went back and forth on whether to include that in the last email. I had heard that from people that I know and trust, but there is always the possibility that there was a miscommunication. I ended up including it because I felt it was a relevant piece of information when combined with the fact that a board which Mr. Pugel has so much influence over was stepping outside of its charter. Perhaps it was just Mr. Harry Jones' enthusiasm for writing grant proposals that came into play. Perhaps not. In any case, Mr. Pugel clearly denies having any larger plan that includes a sanitary sewer system.

This email is from the group Water For Pine Strawberry. We will be sending out an email after each of the PSWID meetings with a summary of what the board did, additional facts that are relevant to what went on, and some commentary. Please forward this email to friends and neighbors that are interested in the local water issues. If you would like to be added to or removed from the list for these emails, please reply to WaterForPineStrawberry@hotmail.com. Emails on earlier meetings are available on our website: www.WaterForPineStrawberry.com.

Water For Pine Strawberry is a group of residents who are concerned about the communities water issues and how they can best be resolved. Visit our web site, www.WaterForPineStrawberry.com, for more information. The website for PSWID is www.pswid.org.

Clarifications can be submitted by anyone who is explicitly named, implicitly identifiable, or a board member to items in this email. Clarifications will be posted on our website. We reserve the right to post a response. Clarifications must deal with the topics discussed in the email that relate to the individual or the board. They must be in family friendly language and be non-abusive. When the clarification is accepted, it will be posted to the website and notice of that posting will be added to the next email.