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Arizona Corporation Commission

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5 **John G. Gliege (#003644)**
6 **Attorney for Pine Strawberry Water Improvement District**

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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MWA

8 IN THE MATTER OF THE)
9 APPLICATION OF PINE WATER) DOCKET NO: W-035 12A-03-0279
10 COMPANY FOR A DETERMINATION)
11 OF THE CURRENT FAIR VALUE OF ITS) **PINE STRAWBERRY WATER**
12 UTILITY PLANT AND PROPERTY AND) **IMPROVEMENT DISTRICT**
13 FOR INCREASES IN ITS RATES AND) **RESPONSE TO PINE WATER**
14 CHARGES BASED THEREON FOR) **COMPANY'S**
15 UTILITY SERVICE AND FOR) **REQUEST FOR STAY**
16 APPROVAL TO INCUR LONG-TERM)
17 DEBT)
18)

19 COMES NOW, Pine Strawberry Water Improvement District (PSWID), by and through their
20 counsel undersigned, and hereby responds to Pine Water Company's Request for a Stay in proceedings
21 as follows:

- 22 1. On May 28, 2009, Plaintiff Pine Strawberry Water Improvement District filed a Motion to
23 Vacate Order for Immediate Possession. See attached Exhibit 1.
- 24 2. A change of venue from Gila County to Yavapai County occurred on May 22, 2009. Until
25 Yavapai County has time to review Plaintiff's motion to Vacate Order for Immediate
26 Possession, the Immediate Possession should not be allowed as a justification for Defendant
27 Pine Water Company's request for a stay.
- 28 3. Pine Water Company, as exemplified by their recent objection to virtually every Request to
29 Produce filed by PSWID in the Condemnation Proceeding, is clearly intending to be
obstreperous and uncooperative, and avoid providing information to PSWID. As may be
recalled, PSWID raised this issue before the full Commission and in response thereto the
Commission crafted Decision #70839.

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5 **John G. Gliege (#003644)**
6 **Attorney for Pine Strawberry Water Improvement District**

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 **PINE STRAWBERRY WATER) Case NO. P-1300-CV-20090785**
10 **IMPROVEMENT DISTRICT, a Tax Levying)**
11 **Public Improvement District pursuant to)**
12 **A.R.S. §§ 48-901 to 48-966 inclusive, and §§ 48-)**
13 **1011 to 48-1019 inclusive and all amendments) MOTION TO VACATE ORDER FOR**
14 **and supplements thereto,) IMMEDIATE POSSESSION**
15 **Plaintiff,)**
16 **v.)**
17 **PINE WATER CO., INC., an Arizona)**
18 **Corporation; STRAWBERRY WATER CO.,)**
19 **INC., an Arizona Corporation; BROOKE)**
20 **UTILITIES, INC., an Arizona Corporation;)**
21 **COUNTY OF GILA, a political subdivision of)**
22 **the State of Arizona; JOHN DOES 1 through)**
23 **10; and BLACK AND WHITE)**
24 **PARTNERSHIPS 1 through 10,)**
25 **Defendants.)**

26 COMES NOW THE PLAINTIFF, Pine Strawberry Water Improvement District, (the District), by
27 and through undersigned counsel, hereby moves the Court for an Order Vacating a portion of the Order
28 of May 3, 2009 regarding the Order for Immediate Possession on the grounds and for the reasons set
29 forth herein.

1. Pine and Strawberry Water Companies as they were moving out are leaving behind a number of ADEQ and ACC violations, which the District would have to remedy at its cost. This is not

1 acceptable. These include leaving in disrepair at least one major well, as well as some other
2 problems with the water systems.

- 3 2. The minimal information which has been provided by Pine and Strawberry Water Companies thus
4 far in an effort to comply with the Order, is insufficient to meet the stipulation requirements. For
5 example, our initial review indicates that the data lists in some instances are at best randomly
6 organized, or organized by first names of clientele. Further, the lists do not address the location of
7 the services nor do the maps provide a legend as to the meaning of the notations thereon.
8 Furthermore, some of the maps are not legible. No information was provided concerning meter
9 sizes. There is no method to coordinate billing addresses with the service information and there do
10 not appear to be service addresses or locations. Not all customers were reported on the lists.
- 11 3. The transition of the electrical power, water service, gas service, and telephone service as the same
12 is involved in both the operations and in the telemetry for the operations of the District System
13 from PWC and SWC to the District is not being concluded in an orderly manner. The Pine and
14 Strawberry water systems have not provided the District any information as to how many meters
15 are involved, their location and for what facilities such meters provide power.
- 16 4. The operation of the water systems and the telemetry equipment concerning the same is not being
17 set up for a smooth transition. The District will have to be provided with the operations and
18 maintenance manuals and the locations of the telemetry equipment for the operations of the water
19 systems. It will also have to have the ability to convert this system to a District owned and operated
20 system. Additionally the District needs the appropriate security information to ensure that all
21 telemetry systems are safe from hackers or other mischief.
- 22 5. The District has been made aware of a dispute, which one of the water companies is having with
23 the owner of a particular well. The District has been made aware of the filing of a Motion to
24 Intervene in the Condemnation proceedings by this individual. Since that dispute affects the used
25 and useful property, which is being taken by the District it is a significant matter. It is our
26 understanding that that well in question provides more than ten percent of the water system supply.
27 Therefore, it is necessary for that issue to be resolved prior to the time the District takes immediate
28 possession of the system.

1 6. There is also a concern about some aid in advance of construction agreements, which
2 Pine/Strawberry Water Company may have entered into, collected money for, and not yet
3 constructed the improvements. The District is taking the position that such agreements are not
4 being transferred to the District; however, the District is concerned about the impact of such
5 agreements upon its constituency. The District understands that the handling of these matters
6 would be up to the Pine/Strawberry Water Company to complete the work that they contracted to
7 complete in a timely manner at the company's sole expense. Likewise, if there are additional
8 agreements to which PWC or SWC are a party concerning the construction of improvements, these
9 too have to be fully resolved and the construction complete, or the money refunded to the payors
10 or some other guarantee of the construction of the improvements provided.

11 7. Because of these reasons and others, Compass Bank, which has committed to loan money to the
12 District for this transaction, was not willing to fund the District's immediate possession of the used
13 and useful assets of the Pine and Strawberry Water Companies and those of Brooke Utilities, Inc.

14 THEREFORE, for the reasons set forth herein, Plaintiff respectfully requests the Court vacate the
15 Order for Immediate Possession, and the requirement for the deposit of funds.

16 RESPECTFULLY SUBMITTED this 28th day of May, 2009.

17 GLIEGE LAW OFFICES, PLLC

18
19
20 /s/ John G. Gliege
John G. Gliege

1 Original of the foregoing delivered/mailed
This 28th day of May, 2009 to:

2
3 Yavapai County Superior Court
4 Attn: Clerk of Court
120 S. Corte
5 Prescott, AZ 86301

6 Copies of the foregoing delivered/mailed
This 28th day of May, 2009 to:

7 Fennemore Craig, P.C.
8 Attn: Bart Wilhoit
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9 Phoenix, AZ 85012-2913

10 Gila County Attorney's Office
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Globe, AZ 85501

12 Brown & Brown Law Offices, P.C.
13 Attn: Mr. Bradley J. Palmer
PO Box 1890
14 St. Johns, AZ 85936

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