

2009 JUN 29 PM 12:36

JEANNE HICKS, CLERK

BY: B. Hamilton

1 FENNEMORE CRAIG, P.C.
Bart S. Wilhoit (No. 020064)
2 Jay L. Shapiro (No. 014650)
3003 North Central Avenue
3 Suite 2600
Phoenix, AZ 85012-2913
4 Telephone: (602) 916-5000
Email: bwilhoit@fclaw.com

5 Attorneys for Defendants
6 Pine Water Co., Inc.; Strawberry Water Co.,
Inc.; Brooke Utilities, Inc.

8 SUPERIOR COURT OF ARIZONA

9 YAVAPAI COUNTY

10 PINE STRAWBERRY WATER
11 IMPROVEMENT DISTRICT, a Tax
Levying Public Improvement District,

12 Plaintiff,

13 v.

14 PINE WATER CO., INC., an Arizona
15 Corporation; STRAWBERRY WATER
CO., INC., an Arizona Corporation;
16 BROOKE UTILITIES, INC., an
Arizona Corporation; COUNTY OF
17 GILA, a political subdivision of the
State of Arizona; JOHN DOES 1
18 through 10; and BLACK AND WHITE
PARTNERSHIPS 1 through 10,

19 Defendants.

No. CV2009-0785

**DEFENDANTS PINE WATER CO., INC.;
STRAWBERRY WATER CO., INC.;
AND BROOKE UTILITIES, INC.'S
RESPONSE TO PLAINTIFF'S MOTION
FOR REFERRAL TO ALTERNATIVE
DISPUTE RESOLUTION**

(Assigned to the Honorable David L.
Mackey)

21 Defendants Pine Water Co., Inc.; Strawberry Water Co., Inc.; and Brooke Utilities,
22 Inc. ("Defendants") hereby respond to the Pine Strawberry Water Improvement District's
23 ("PSWID") Motion for Referral to Alternative Dispute Resolution. Unfortunately,
24 PSWID filed its motion without first consulting with Defendants regarding Alternative
25 Dispute Resolution as required by Rule 16(g)(2), Ariz. R. Civ. P., and Rule 19(E),
26 Superior Court Local Rules—Yavapai County. Had PSWID discussed this issue with

1 Defendants before filing, the parties may have been able to jointly agree on what, if any,
2 Alternative Dispute Resolution procedure would be appropriate and reduce the number of
3 filings before the Court.¹

4 PSWID's motion does not even set forth what form of Alternative Dispute
5 Resolution PSWID thinks would be appropriate in this matter. In any event, Defendants
6 have a Constitutional right to a jury trial and have exercised that right. *See* Constitution of
7 Arizona, Article 17, Section 2 (stating that "compensation shall be ascertained by a jury");
8 Defendants' Demand for Jury Trial (filed contemporaneously with this response).
9 Although Defendants recognize the benefit of Alternative Dispute Resolution in
10 appropriate instances, Defendants are not willing to waive or limit their right to trial by
11 jury in this matter in any way.

12 Based on PSWID's refusal or inability to show that it has financing to purchase the
13 water systems at issue², engaging in any form of Alternative Dispute Resolution at this
14 time would simply be a waste of resources. Should the Court feel that Alternative Dispute
15 Resolution is warranted in this matter, however, Defendants would be willing to consider
16 a mediation with a private mediator after more discovery and after PSWID shows that it
17 has unconditional financing available to purchase the water systems at issue. As
18 demonstrated by PSWID's violation of the Court's Order for Immediate Possession, any
19 mediation prior to PSWID actually proving it can fund the transaction would be a
20 pointless exercise that will only serve to cost the parties additional attorneys' fees.

21 Similarly, based on counsel's experience, due to the valuation concepts at issue in
22 this litigation, the parties would need a private mediator (selected by the parties) with
23

24 ¹PSWID filed three motions on procedural issues (the Alternative Dispute Resolution
25 motion, a Motion for Rule 16 Conference and a Motion to Consolidate Pending Motions)
26 on June 9, 2009 and June 11, 2009 without even attempting to contact Defendants first.

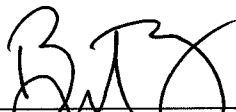
² Even the limited Commitment Letter Plaintiff produced from Compass Bank (which
contains numerous undisclosed terms and conditions) expires on July 31, 2009. *See*
Exhibit 1 to PSWID's Response to Defendants' Motion for Sanctions at pg. 4.

1 significant condemnation experience if mediation is to be effective. Likewise, any such
2 mediation should not be scheduled until after the parties have the opportunity to conduct
3 more discovery and complete their valuation information.

4 In conclusion, if PSWID can illustrate that it has unconditional financing ready to
5 purchase the systems, Defendants are willing to participate in a private mediation to be
6 scheduled after more discovery in this matter. To the extent that it is appropriate to
7 discuss Alternative Dispute Resolution at all given the procedural status of this case,
8 Defendants' respectfully request that the Court order the parties to discuss a potential
9 deadline for the completion of any such mediation as part of the Rule 16 Conference
10 Memorandum that the Court will undoubtedly have the parties prepare prior to a Rule 16
11 Conference.

12 DATED this 29th day of June, 2009.

13 FENNEMORE CRAIG, P.C.

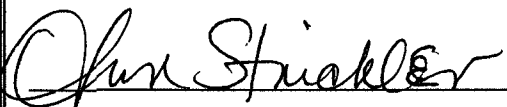
14
15 By 
16 Bart S. Wilhoit
17 Jay L. Shapiro
18 Attorneys for Defendants
19 Pine Water Co., Inc.; Strawberry Water
20 Co., Inc.; Brooke Utilities, Inc.

21 ORIGINAL of the foregoing filed
22 this 29th day of June, 2009, with
23 COPY mailed to:

24 The Honorable David L. Mackey
25 Yavapai County Superior Court
26 120 South Cortez
Prescott, Arizona 86301

John G. Gliedge
Gliedge Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388
Attorneys for Plaintiff

1 Bryan B. Chambers
2 Gila County Attorneys' Office
3 1400 E. Ash Street
4 Globe, AZ 85501
5 Douglas A. Brown
6 Brown and Brown Law Offices
7 P.O. Box 1890
8 St. Johns, AZ 85936

9 
10 _____

11 PHX/2209800 1

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26