

Hello Neighbor,

As you may be aware, the immediate possession sought by PSWID fell through. Both sides have filed motions with the Court. Brooke requests to have sanctions levied against PSWID. PSWID requests that the immediate possession be vacated. I have provided a summary of each below and have posted the full documents at the website. I also look at how much money PSWID has left and what the overall cost of this might be. I provide some comments on the situation at the end.

Attached to the email is the spending chart for spending through April.

If you are interested in the unusual amount of rain in May, remember to checkout the precipitation reports on the website:

<http://www.waterforpinestrawberry.com/Hydrology.htm>

#### 1. PSWID Motion to Vacate

- The PSWID motion can be read here:  
<http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm>.
- PSWID filed a motion asking the Court to vacate the immediate possession portion of the Court's order for the following reasons:
  - ADEQ and ACC violations were being left behind for the district to address at their own cost. Includes claim of leaving a major well in disrepair.
  - Customer lists did not have enough information to enable billing. System maps are hard to read.
  - Transition of electrical power is not being done in an orderly fashion because the district does not know where all the meters are and what facilities each meter provides power to.
  - District doesn't have operations and maintenance manuals for the equipment. District does not have the security information for the telemetry system.
  - Dispute over the ownership of the Gary Rogers' well affects the property that they intend to condemn. State that their understanding is that the well provides more than 10% of the water in the system.
  - There are construction agreements which have not been completed, but for which Brooke has been paid. District wants Brooke to complete those at Brooke's expense.
- PSWID states that for these and "other" reasons, Compass Bank won't extend financing.
- Comment: Most of these issues go back to the fact that PSWID did not include these items in the Stipulation. As acrimonious as the relationship is between the two sides, it is a bit much to expect Brooke to be pointing out to PSWID what their mistakes are. When criticized in the past the board would counter that they had hired "professionals". As General Manager, Mr. Harry Jones is supposed to be one of those "professionals". It should have been his responsibility to make

sure all of the information and activities were asked for to affect a smooth transition.

## 2. Brooke Motion for Sanctions

- The Brooke motion can be read here: <http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm>.
- Brooke filed a motion asking the Court to apply the following sanctions to PSWID:
  - Awarding Defendants all attorneys' fees associated with PSWID's application for immediate possession and the negotiations, work, and preparation caused by the application.
  - Requiring PSWID to post a bond in the amount of Defendants' attorneys' fees and expert fees through trial for security in the event that PSWID abandons this action or cannot pay the ultimate judgment. [Brooke suggests that this amount be \$300,000]
  - Forcing PSWID to disclose to Defendants any and all information and documents they have regarding their purported financing for purchase or condemnation of the water systems.
- Brooke states that PSWID "recklessly and in bad faith" pursued condemnation litigation, negotiated the stipulation for immediate possession, and had the Court enter an order to that affect when PSWID knew that they did not have financing for the \$3,200,000 bond.
- Exhibit E of the motion is a letter from Compass Bank to Mr. Harry Jones dated May 14<sup>th</sup>. This is the letter that Brooke says establishes that the district knew that they didn't have financing when they entered into the immediate possession order. The following paragraph from that letter indicates that financing for immediate possession was not part of the commitment that Compass Bank made: "Compass Bank is unwilling to amend its commitment to cover the Stipulation regarding immediate possession in view of a number of risks attendant to that process as well as other matters and developments relating to the District."
- Comment: Clearly, PSWID's not being able to provide the \$3,200,000 is the biggest issue in all of this. If Compass Bank would have had to "amend its commitment to cover the Stipulation", then that means immediate possession was not covered in the original commitment. Either the PSWID board misunderstood the limits of Compass Bank's commitment or the PSWID board went ahead with immediate possession knowing they didn't have financing. To me, the first seems negligent and the second is clearly unethical and a clear violation of their duty to the community. The board needs to provide an explanation to the community.

## 3. Payson Roundup Article

- The Roundup had an article on the situation that can be viewed here: [http://www.paysonroundup.com/news/2009/jun/05/water\\_district\\_buy\\_legal\\_swap/](http://www.paysonroundup.com/news/2009/jun/05/water_district_buy_legal_swap/)

## 4. PSWID Spending

- As of May 31<sup>st</sup>, PSWID had \$114,189.26. This represents the balance after paying the April bills that were presented in May. PSWID has been spending \$30,000 to \$40,000 per month since last November. At this rate of spending PSWID will run

out of money by the end of July. The next property tax collection which will provide the 2009/2010 funds is not until October.

- The current year's budget is \$90,000 and the board has been supporting their high spending rate with money that had been saved by earlier boards. That money is nearly gone. The board has not set next year's budget yet, but it is likely that it will need to be in the neighborhood of \$500,000 if the board continues on its present course. That would mean that property taxes for PSWID would increase by about 5.5 times.

#### 5. The Cost of Repeated Failure

- The board has spent \$347,000 on the effort to takeover the water companies through April. Estimating May spending at \$35,000 and adding the \$37,000 paid to Compass Bank for loan origination fees, the total comes to \$419,000.
- In the Payson Roundup, Mr. Harry Jones estimates it will take another year to resolve the condemnation. Estimating a continued spending rate of \$35,000 per month makes the cost for the next year \$420,000.
- It isn't clear how much the sanctions requested by Brooke will be, but \$75,000 would seem like a conservative number.
- It shouldn't be forgotten that the arbitration over breaching the K2 contract it still out there. It was postponed until July and Brooke implied that they wouldn't pursue it separately if they thought they were recovering their K2 expenses in the price of the water companies. If Brooke decides to pursue it, the loser pays all costs. Arbitration board will cost \$120,000. Estimate legal fees at \$50,000. Brooke has stated that they spent several hundred thousand dollars on K2, so estimate a recovery of \$150,000. So if the board loses this one it could cost the community \$320,000.
- If they pursue the condemnation and then back away from the final price the district will have to pay Brooke's condemnation costs. Brooke estimates that this would be \$300,000.
- So the best case estimate is that it costs \$839,000 to complete the condemnation. Worst case is that the condemnation fails and it costs the community \$1,534,000.

#### 6. Comment on Situation

The situation seems to sum up to:

- The PSWID board has spent \$420,000 and the only thing that the community has received in return are the future financial liabilities for breaching the K2 agreement and sanctions for failing to finance the immediate possession that the board asked for.
- The PSWID board went ahead with the immediate possession with the knowledge that they did not have a firm financial commitment.
- The district is looking at continued high levels of legal spending.
- With the rate that the PSWID board is spending at, the district will soon be bankrupt.

The PSWID board owes the community an explanation of:

- How they could agree to an order for immediate possession without a firm commitment for the financing. From the wording in the Compass Bank letter to Mr. Jones, it looks like financing for immediate possession was not part of

their original commitment to the district. The board needs to explain why they didn't get the commitment modified to cover immediate possession before signing on to the court order.

- What the terms of the Compass Bank financing are. Mr. Haney stated at a previous board meeting that the terms of the loan would be posted on the PSWID website, but they never were. The community is the one that is on the hook to pay for this loan, we should know what the terms and conditions are before we become obligated to pay for it.
- How the board plans to fund another year or more of litigation for the condemnation and potentially the breach of the K2 agreement.
- Why the board should be allowed to spend another \$350,000 to \$450,000 for the effort to acquire the water companies. The board needs to explain why, given the track record with the first \$420,000, they should be entrusted with even more of our money. They need to explain why owning the water companies would be worth the price we are paying. They need to state what price would be too high and what price they can pay given the Compass Bank loan terms. They need to address the probability that the jury award will be higher than that.
- How the board plans to avoid bankrupting the district in the near term.

My suggestions to the PSWID board are:

- Since the money is flying out the door and there is no water system to run in the near future, let the General Manager go and save \$7,000 to \$9,000 per month. Given that the General Manager could not plan an effective transition of operations to the district, a more effective General Manager should be hired.
- Retain different legal counsel. Mr. Gliege's aggressive tactics have proven ineffective and very expensive. The condemnation has been pursued as a personal vendetta by the board and those that have influence with the board. This should have always been viewed as a business deal. Different legal counsel is needed to clean up the legal mess that the community is in and to see if the acquisition can proceed with less acrimony and expense.
- Since they need to fire their staff, they should also consider firing themselves by resigning. They took their shot and have created big problems for the community and wasted large sums of money. While there is something to be said for people having to fix the problems that they create, as long as the board continues to operate in the manor that they have been, they are doing a disservice to the community and should step down.
- If they do decide to stay and work through the problems, the board needs to realize that full disclosure of what they are doing is in both their and the community's best interest. The board also needs to stop and reassess the risks and costs of the condemnation effort before deciding to continue with it.

One other thing that I would like to add is that my observation is that for the most part the board members are sincere in their efforts and that they believe that what they are doing is in the best interest of the community. I think that they are decent people who have put their trust in the wrong people. In my view, those people have influenced

them to take high risk decisions that are not in the best interest of the community as a whole. I have criticized a lot of the board's actions, but at the end of the day they are still our neighbors.

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](mailto:WaterForPineStrawberry@hotmail.com). Emails on earlier meetings are available on our website: [www.WaterForPineStrawberry.com](http://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](http://www.WaterForPineStrawberry.com), for more information. The website for PSWID is [www.pswid.org](http://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.