

Hello Neighbor,

There has been a lot of legal activity and I summarize that below. I have been moving, pretty much since the beginning of June, so I have been a bit slow on some of this. Hopefully things will be getting closer to normal over the next couple of weeks.

#### 1. PSWID Motion to Vacate

- On June 15<sup>th</sup>, Brooke responded to PSWID's motion to vacate the immediate possession portion of the immediate possession court order. Brooke states that the motion should be denied because PSWID has already violated the court and is seeking to insulate itself from the consequences of its actions after the fact. Brooke then addresses the claims that PSWID made about why it is Brooke's fault that PSWID did not post the bond.
  - Existing ADEQ and ACC Violations: Brooke says that none exist. Brooke states that if they did exist, under basic condemnation law any deficiencies are addressed as part of the determined value and that there is no law requiring these be "fixed" before a transfer can take place. In addition it was addressed as part of the negotiation of the stipulation and was specifically left out.
  - Insufficient Information Provided by Brooke: Brooke points to the list of items in the stipulation that Brooke was supposed to provide and notes that the items that PSWID is complaining about are not there. Brooke points out that the material provided is in exactly the same form as is used by Brooke itself. Brooke points out that if the information was important to PSWID, then it should have been included in the stipulation.
  - Transition of Utilities: Brooke points out that the providers of utilities are well known and that PSWID could have called them to transfer service and set it up in the District's name. Brooke points out that providing location of meters was not in the stipulation and if it was important, PSWID should have asked for it.
  - Telemetry Equipment and Manuals: Brooke points out that this wasn't included in the stipulation either. Brooke makes the point that the stipulation allowed access to Brooke employees for 20 hours worth of questions and that these and the other information PSWID felt was missing could have been obtained that way.
  - Mr. Gary Rogers' Intervention: Brooke states that this should not have affected the condemnation since PSWID is condemning the property of the Brooke and cannot take any interest held by other defendants. Brooke states that if PSWID was proceeding prudently they would have obtained a title report for all of the property at issue.
  - Existing Construction Agreements: Brooke points out that these weren't covered in the stipulation either. Brooke points out that in taking the business that PSWID takes the rights and obligations of that business and that ultimately it is addressed in the assigned value of the water system.

- The motion can be read here:  
<http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm>.

## 2. Brooke Motion for Sanctions

- On June 11<sup>th</sup> PSWID filed a response to Brooke’s motion for sanctions. This motion includes a copy of the financing commitment letter from Compass Bank. Portions of it are blacked out. PSWID addresses the sanctions as follows:
  - Failure to Post \$3,200,000 Bond: Says that the bank got cold feet from the issues that PSWID put forth in their motion to vacate. Included the commitment letter to show that they have funding to complete the purchase. Points to the fact that PSWID paid Compass Bank \$37,020 for the loan origination fee.
  - Comment: In the Compass Bank Term Sheet it is called a “Commitment Fee”, not a “loan origination fee” as it was called in PSWID’s motion. It isn’t clear whether that fee was for making the commitment to finance and is not refundable if the loan goes through. It is also pretty clear that a “fully executed purchase and sale agreement” is a condition of the loan. That wouldn’t have existed in immediate possession.
  - Comment: In the meeting where the board accepted the commitment agreement with Compass Bank there was no mention that the terms included the expenditure of \$37,020. This is important information that should have been provided to the public before such a significant expenditure of our money was made.
  - Requirement to Post a Bond for Attorney’s Fees: Was not specifically addressed.
  - Requirement to Provide All Financing Information: PSWID states that they need to keep the value of the financing secret in order to not be at a disadvantage in negotiation of an acquisition price.
  - Comment: This seems a bit of a stretch since Mr. Haney announced the size of the loan at the April 16<sup>th</sup> PSWID board meeting. I will look at the commitment letter in more detail in a future email.
- On June 23<sup>rd</sup> Brooke filed a replied to PSWID’s response. The points that Brooke makes are:
  - PSWID has offered no proof that they had financing for immediate possession. Says that PSWID mischaracterizes the issue by arguing that it has financing to “conclude the condemnation”. Immediate possession and concluding the condemnation are two different things. Says that PSWID is avoiding answering the actual question of whether they had financing for immediate possession.
  - Brooke points out that the evidence that PSWID provided shows that they did NOT have financing for immediate possession. Points out that the commitment letter does not mention immediate possession anywhere. Points out that the commitment letter requires execution of a purchase agreement and there is none with immediate possession.

Points out that the commitment letter requires that the purchase close by July 31<sup>st</sup> and closing does not occur with immediate possession. Points out that the May 14<sup>th</sup> letter to Mr. Harry Jones clearly indicates that Compass Bank did not intend to fund immediate possession.

- Discusses why PSWID's willful violation of a court order is a demonstration of reckless behavior and bad faith. Points out that the cases cited by PSWID are not relevant. Points to legal precedence that if a plaintiff "abandons" a condemnation action that the defendant is entitled to recover costs. Points out that PSWID had every reason to know that the Compass Bank commitment did not cover immediate possession.
- Discusses whether PSWID will be able to see the condemnation through. Points out that the Compass Bank commitment expires July 31<sup>st</sup>, so PSWID will again be without financing. Points out that if they are unable to finance the final judgment, PSWID will not have funds to pay for Brooke's costs.
- Discusses why PSWID should be required to provide information on financing. Brooke states that they already made a request covered by Arizona law and that PSWID has no basis with which to withhold it.

- Both motions can be read here:

<http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm> .

### 3. PSWID Motion for Alternative Dispute Resolution

- On June 10<sup>th</sup> PSWID filed a motion requesting that the condemnation be referred to Alternative Dispute Resolution (ADR).

- The motion can be read here:

<http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm> .

### 4. PSWID Motion for Expedited Disposition

- On June 10<sup>th</sup> PSWID filed a motion for expedited disposition of the condemnation action.

- This motion call for a Rule 16 scheduling conference, which appears to be to set the ground rules to minimize delays and set a schedule for discovery and depositions.

- The motion can be read here:

<http://www.waterforpinestrawberry.com/data%20pages/PurchasePSWIDDocs.htm> .

### 5. ACC Pine Water Rate Case

- Previously Brooke had asked the ACC to postpone the rate case that was scheduled for Pine Water company this year because it didn't make sense to spend the time and money to do that with the water company in the process of being condemned. The ACC agreed to that request, but also ordered a financial review of Pine Water Company. Brooke was to provide the ACC with financial data. Brooke asked for a stay of that due to the impending immediate possession.

- On June 9<sup>th</sup> PSWID filed a motion asking the ACC to deny the request for the stay, saying that PSWID had filed a motion to vacate the immediate possession.
  - On June 11<sup>th</sup> Brooke filed a response that describes the failure of PSWID to post the \$3,200,000 bond and Brooke's filing for sanctions. Brooke points out that PSWID is still intending to go through with the condemnation, so it would be a waste of ACC and Brooke's time and resources to do a rate case that will be thrown out once the condemnation takes place.
  - The documents can be read here:  
<http://www.waterforpinestrawberry.com/data%20pages/RateCaseDocs.htm> .
6. Pugel Action with ACC to be Removed from CC&N
- In 2006 Mr. Ray Pugel, Mr. Jim Hill, and Mr. Brent Weekes filed an action with the ACC to have their property removed from Brooke's service area. There were several hearings in the early fall of 2007 where they and Mr. Hardcastle testified and when Mr. Pugel or his surrogates quote testimony by Mr. Hardcastle, those hearings are typically the source. Mr. Weekes later withdrew from the action.
  - On June 4<sup>th</sup> Mr. Gliege, who also happens to be Mr. Pugel's lawyer in this matter, filed a request to schedule a conference so that the completion of the hearings on the rebuttal testimony and the matter has a whole can be accomplished.
  - Brooke replied that since Mr. Pugel had taken no action on this matter since August 2008 that the matter has been rendered stale. Brooke also states that this action has been rendered moot by the filing of the condemnation complaint.
  - The documents can be read here:  
<http://www.waterforpinestrawberry.com/data%20pages/MiscPSWIDDocs.htm>

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.