

Hello Neighbor,

As you may remember PWCo filed for approval of the K2 well encumbrance, that is associated with the K2 Joint Well Agreement, with the ACC. This occurred on June 11, 2007. Rim Country Water (RCW) intervened in this to try and block the K2 well. RCW used this to push their claims that providing money for the K2 well was unconstitutional, along with a hand full of other claims against going forward with the K2 well.

On September 5, 2008, Judge Nodes issued a recommendation to the ACC commissioners that the encumbrance be approved by the ACC. The commissioners are tentatively scheduled to take up the matter at their September 23rd/24th meeting. The commissioners are free to vote for or against the recommendation.

We have posted Judge Nodes recommendation here:

<http://www.waterforpinestrawberry.com/data%20pages/BrookePSWIDDocs.htm>. This is a good document because it summarizes all of the events that have taken place and the arguments that have been made for and against by PWCo, RCW, and the ACC staff.

A summary of Judge Nodes findings (starts at paragraph 40 on page 16 of the document):

- That PWCo's financial status is well within the limits typically required by the ACC staff and Commission for the requested debt obligation. Also that the debt is within PWCos corporate powers, is consistent with sound financial practices, and is for a lawful purpose in the public interest.
- That the ACC has no jurisdiction to determine the propriety of the District's actions, including the validity of the K2 Joint Well Agreement. Indicates that if RCW wants to raise issues related to improprieties of the board's actions, that they need to go to a court with appropriate jurisdiction. Judge Nodes notes that RCW has had many months to do that, but has not done so.
- That the ACC has no jurisdiction to determine the constitutionality of the K2 Joint Well Agreement. Judge Nodes notes that RCW's contention that Article 9, Section 10 of the Arizona State Constitution is absolute in its prohibition of aiding churches or public service corporations with public money is not supported by case law. Judge Nodes notes that he is not rendering an opinion on the constitutionality and that if a ruling on this is desired that it should be taken to a court with the proper jurisdiction.
- Made no finding on whether the cost of K2 will be recoverable in future rate cases.
- Leaves the issue of whether the K2 well will impact surrounding wells for when information is received after the K2 well is in place.

Comment: The history behind this is that RCW used their intervention, in what would have been a routine matter, to delay the start of the K2 well out past the recall election, to keep the idea going that the use of the \$300,000 was unconstitutional, and to provide ACC sponsored public comment forums where RCW could fan the flames. Besides being the lawyer for Mr. Pugel and the PSWID board, Mr. Gliege is also the lawyer for RCW. It is hard to imagine that Mr. Gliege didn't know that the ACC doesn't have jurisdiction

to decide constitutional issues, so it would seem that delay was the only purpose of their intervention. In this they were helped by Commissioner Kristin Mayes.

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 .