

Hello Neighbor,

This email provides some recent information.

1. PSWID Updated Claims About Rate Impacts on Their Website

- After the last email went out, PSWID modified the statement on their website to reflect part of what we had said in the email. The statement now reads (modified portion is in **bold**): “One of the most important conclusions of the study is that if the District can acquire the water systems for the appraised costs or even somewhat more, then the District should be able to purchase the systems, make the initial improvements to the systems that are needed to bring the systems up to a minimal level of reliability, operate the systems, AND do it without increasing water rates for at least two years. If, after two years, the members of the District wish to continue with a capital improvement program to replace the dilapidated infrastructure, the rates should then only increase a little more than **five dollars per customer per month in the third year for Pine Customers and eight dollars for Strawberry customers (based upon a monthly usage of 5000 gallons)** *Editors note: Originally used the wrong table in identifying these rate increases. In perspective, that is about the cost of a value meal!* If the public decided not to improve and repair the systems, then only very minimal increases would be needed in the future.”

2. PSWID Board Election

- Many of you have been asking about the results of the PSWID board election. Gila County is still counting votes, but at this point I am trailing and it doesn't seem likely that I can make up the ground. When the final vote total is available, I will comment on the election in more detail.

3. Payson Roundup Article on Milk Ranch Well Article

- The Payson Roundup had an article which had more information about the option to purchase the Milk Ranch well than was given at the last PSWID meeting. It can be read here:
http://www.paysonroundup.com/news/2008/nov/11/option_purchase_well_okd/ .

4. Problems with Economists.com Cash Flow/Rates Report

- I have identified several problems with the Economists.com cash flow/rates report which inflate the revenues. I sent a set of questions and comments to Mr. Jackson at Economists.com. He has responded to them. I have some further comments to make back to him. They are apparently producing a final version of the report. Based on that I'll comment on whatever problems remain.
- He said in his response that the differences between the base rates of the three rate sets in Strawberry are included in the Economists.com model, but were not included in Table 6 of the report. He said that within his model there is no rate change for Strawberry. So that means that my prior email on the rate changes for Strawberry that were implied by Table 6 is incorrect.

5. K2 Arbitration

- At the PSWID meeting, Mr. Haney had stated that arbitration would be in January. Brooke sent me an email that the arbitration hearing is scheduled for February 9–12.

- Comment: In looking at it, the arbitration will probably be the pivotal event in all of this. When the district denounced the agreement, they had a long list of items that they said justified their actions. In looking at those, most of them are complaints about process and paperwork. An arbitration board isn't going to tear up a contract over those types of issues. They might clarify what needs to be done and who needs to do it to remedy the situation, but they don't rise to the level where the whole contract is not valid.

There seems to be two substantial issues. Is the agreement constitutional/legal and can the timeline be extended? To the first issue, the district was unable to convince the ACC that the agreement is unconstitutional. Of all of the different parties that have been involved in this, the ACC legal staff is the one group that doesn't have a stake in the outcome. They put together a well founded argument that the agreement is constitutional and Judge Nodes agreed with that in his recommendation.

For the second issue, reading the text in section 3.3 of the agreement, it does not say that the district's approval is required to extend the timeline. Section 3.3 says that the deadlines shall be extended for any period of time that progress is delayed by unforeseen delays or actions of governmental authorities. The K2 project has been waiting for the ACC to approve the encumbrance. The ACC staff recommended approval on September 7, 2007. It is now 15 months later. It won't be too hard to make the case that this delay is well beyond what would be expected.

So you have the situation where the district is going into arbitration with a very weak position on the substantial issues. It has failed in the past to convince an independent legal group and Judge on the constitutionality issue and clearly the ACC delay has been much longer than would have reasonably been expected.

There are three possible outcomes to the arbitration:

- Ruled that Agreement is Not Legal
This results in the agreement being voided. The district gets the money in the escrow fund and Brooke reimburses the district for their legal fees. District may face a lawsuit by Brooke over misrepresentation by the district in the negotiation of the agreement.
- Ruled that Agreement is Legal and Timeline Can Not be Extended
This leaves the district in the position that they can use the termination clause that the project must be expected to finish by May 2009. The district eventually gets the escrow money. Since both sides lost on issues, probably each side pays their own legal fees.
- Ruled that Agreement is Legal and Timeline Can be Extended
District doesn't get the escrow money and has to pay Brooke's legal fees and maybe additional damages. This will bankrupt the district and it is likely that the board would have to issue a special property tax assessment in order to pay. Brooke goes ahead with the K2 well. Condemnation effort is probably put on the shelf because of financial issues.

The joker in the deck is the ACC. In September they delayed deciding on the encumbrance until their December meeting. My opinion is that if they were

inclined to disapprove the encumbrance, they would have done so at the September meeting because it would have made the crowd happy and they would have been done with it. They delayed the decision so that PSWID would have more time to make the condemnation happen. Will there be progress on the condemnation before the ACC meeting? No way to tell. If the ACC did disapprove the encumbrance, I'm not sure what affect that would have. Brooke says that it isn't required, but I'm sure that the district would try to make the case that it is required.

The other wild card in this is the condemnation of the PWCo. The district is claiming that if the water company is condemned, all the K2 litigation goes away. Essentially because they will have acquired the other party in the lawsuit. Brooke says that this won't be the case. I don't have an idea as to who is right on this. It would seem to me an abuse of government power for the government to be able to make litigation go away by condemning their property. I suspect if that is the case it will be part of the cost that Brooke asks for the water companies.

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. Emails on earlier meetings are available on our website: 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, for more information. The website for PSWID is 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.