

## Testimony taken on 9/27/2007 at ACC Hearing

These are the excerpts from the testimony on 9/27 that dealt with discussions of the value of the water companies. They were taken from the transcript that is available here: <http://www.rimcountrywater.org/resources/06+092707+Pine+Water.TXT>. The excerpts have been reformatted for easier reading.

Questions by Mr. Shapiro:

Answers by Mr. Hardcastle:

Q. Judge Nodes also asked you last time why, given all the frustration and cost of running the system, you don't just try to negotiate a sale of the system. Do you recall that?

A. Yes, I do.

Q. He also asked you, if there was a willing buyer and willing seller, would you be interested in selling the Pine Water and the Strawberry water system. Do you recall that?

A. Yes.

Q. And you responded that Brooke was essentially in the business and always interested in monetizing its assets, so if a deal makes good sense, it would be pursued, correct?

A. Yes.

Q. And you testified that there had been some discussions of a sale that had already taken place when you were on the stand before. Do you recall that?

A. Yes.

Q. Have there been any further efforts since those hearings to sell the company?

A. Yes, there have.

Q. Okay. What did, what efforts took place?

A. Based on Mr. Pugel's testimony of the hearing, we contacted Mr. Gliege and had offered to monetize the assets of Pine and Strawberry Water Company to Mr. Pugel.

Q. And what number did you use in your offer? Where did you get the value you offered to sell the companies to Mr. Pugel for?

A. We essentially used his valuation number of \$4.3 million and offered it to him for that price.

Q. It wasn't actually a value -- he didn't conduct the valuation; that was a document that Mr. Gliege had provided the company in advance of the trial in this case that he may use?

A. That's correct, that's correct.

Q. To the best of your knowledge that \$4.3 million valuation was a number that somebody came up with a few years ago when there was efforts to have the district take over for the companies?

A. Yes. I believe that occurred in 2003, 2004.

Q. What was Mr. Pugel's response to your offer to sell both of the companies to him for \$4.3 million?

A. Mr. Pugel indicated that he has no interest being involved in the ownership of the water companies in any way.

Q. What do you make of Mr. Pugel's response?

A. I think Mr. Pugel's response is indicative of somebody who has a problem with the company and he wants somebody else to solve it besides himself.

Q. This somebody else being the community?

A. Probably.

Q. Was that the end of the discussions of a sale since the last hearing?

A. It was with Mr. Pugel, yes.

Q. Does he appear to be a willing buyer in any way, 7 shape or form in your opinion?

A. Doesn't appear to me to be, no.

Q. Mr. Gliedge had another client that expressed some interest in buying the systems?

A. Yes.

Q. And you had first discussions through Mr. Gliedge of that client's interest?

A. Yes.

Q. Is that the same client of Mr. Gliedge's that you referenced there was some prior discussions with when you previously testified?

A. Yes.

Q. What is the status of those further discussions?

A. Well, unfortunately those discussions don't appear to be positive or going anywhere either.

Q. Why not?

A. Because the interested party wanted, was interested in an asset purchase, not a stock purchase. And with the regulatory approvals that are tied with such a purchase, we think it is very problematic, very time consuming, very expensive, and the outcome is verymuch unknown.

Q. And isn't it true that they wanted to conclude the sale and obtain Commission approval in six months?

A. Yes.

Q. Do you think that's realistic?

A. Probably not.

Q. Did Mr. Gliedge's client also ask Brooke for an indemnification by Brooke against anything that might impact the assets?

A. Yes.They wanted pretty much an open indemnification.

Q. Did they also want all debts paid off including advances in aid of construction for the sale?

A. Yes.

Q. And was the purchase price that was offered acceptable to Brooke?

A. No.

Q. So what do you make of those efforts, Mr. Hardcastle?

A. It appears that with respect to Mr. Gliedge's other client, we neither also have a willing buyer.

Q. Also do not have a willing buyer?

A. We do not have a willing buyer.

Q. Does Brooke see these two water companies as a, as a good continuing business investment?

A. Unfortunately, no.

Q. So what will Brooke do given that viewpoint?

A. Well, we continue to be a regulated entity and we will do our best to fulfill the regulatory obligations and serve our customers the best we can.

MR. SHAPIRO: Thank you, Your Honor. I have nothing further.

Questions by Mr. Davis:

Answers by Mr. Hardcastle:

Q. You indicated something to the effect a few moments ago that this is not a profitable business for you or good business for you.

A. Over the ten-year period of time it has not been an immensely successful business, no.

Q. As an owner of water utilities, what type of return would you want in order for it to be a good business?

A. The answer to that is as high as possible. However, the return for these regulated entities is dictated by the Commission.

Q. Well, what would you expect? I know you want a million dollars or million percent, but what would you expect to get on a profitable, well-run utility for water companies in Pine?

A. Mr. Davis, the return is always a function of the risk. I would, I would have to categorize Pine and Strawberry as high risk companies because of the problems and the circumstances that are involved. So you would certainly want to see a rate of return that is on the high side of, you know, other comparable returns.

Q. Give me a range.

A. Depends on, you know, as you know, financially it depends on what your other alternatives are for rate of return in the market, but probably 12 to 15 percent is something you would like to see in a case like this.

Q. You said that you are not getting that right now, correct?

A. I think, I think what I said is over the course of ten years these companies have not been a very profitable venture for us.

Q. Over those ten years what is your typical profit on the Pine Water system per year?

A. More years than not we have had no profit.

Q. What is about your average over the last ten years?

A. I don't know that number.

Q. Well, if you don't know what the average is over the last ten years, how is it you can testify that it is not a profitable business?

A. Because I know whatever that average number is it is most likely negative --

Q. You have lost me.

A. -- over that period of time, I am sure.

Q. What about Strawberry?

A. Strawberry is probably a little bit different case. Probably Strawberry has been more profitable than Pine, probably more years than not has been profitable.

Q. But nowhere near the 12 to 15 percent you would want for the high risk company?

A. Not over that period of time, I wouldn't think so.

Q. So when you offered Ray this business for \$4.3 million that lost income for the last ten years, did you really expect him to buy it?

A. I think we made an effort to see if there was a willing buyer that had some interest. Because of Mr. Pugel's complaints about the nature of the company, me, and the way we operate the business, we certainly wanted to give him the opportunity to do that if he felt so inclined.

Q. If you are truly serious about selling this company, you are going to have to drop your price, right?

A. I am not sure why you would say that.

Q. Because nobody is going to buy it for \$4.3 million for something that loses money, right?

A. Well, I think that depends on what the, what the willing buyer would perceive that they could do in order to make improvements to the company as to what that rate of return over some period of time would be. I wouldn't agree with that statement necessarily, no.

Q. You think there is a buyer out there for \$4.3 million for a business that has lost income for the last ten years?

A. I don't know that. I mean there are, there are certainly businesses, there are certainly other kinds of businesses that are purchased for, you know, that don't have operating profits for long periods of time that are certainly purchased all the time.

Q. Are you willing to drop your price to get rid of this business?

A. I am willing to monetize the asset that we have at a fair and reasonable price if we have a willing buyer and willing seller.

Q. So what is a fair and reasonable price for a business that loses income for ten years?

A. In this particular case, I think we were using Mr. Pugel's number of 4.3, \$4.3 million. We think that's probably a pretty reasonable price.

Q. A fair price, \$4.3 million?

A. Yes.

Questions by Mr. Gliege:

Answers by Mr. Hardcastle:

Q. Mr. Hardcastle, you indicated this morning under direct exam from Mr. Shapiro that you had put a price on the water company of \$4.3 million?

A. I think that was, I think I indicated that was the price that we had offered to be purchased for.

Q. And do you know where that number came from?

A. Yes. I think that was the indicated purchase price of the petition to buy the Pine Water Company. That was the water system acquisition cost, I believe, from the 2003, 2004 petition.

Q. And that petition effort did not come to fruition, did it?

A. Excuse me?

Q. That petition did not, was not successful, was it?

A. No, it was not.

Q. And you also indicated that Mr. Pugel was not interested in purchasing your company, correct?

A. That's correct.

Q. However, another one of my clients may have expressed an interest in purchasing the company?

A. Expressed some interest.

Q. And you set a price on the company with that individual as well?

A. Yes, I think we did.

Q. And do you recall what that price might have been?

A. I think it was \$3 million.

Q. Okay. And exactly -- in your previous testimony you indicated that you were interested in monetizing the assets. What assets were you interested in monetizing?

A. The assets of Pine Water Company and Strawberry Water Company.

Q. Okay. So you were interested in converting those assets into cash?

A. Correct.

Q. However, you received an offer for the assets and you indicated that you declined because it was only an offer for the assets, correct?

A. That's correct.

Q. So when you said you wanted to monetize the assets, that really wasn't true, was it?

A. No, I think, you know, my term in using the term monetizing the assets applied to converting the hard assets into a cash equivalent.

Q. Right. So when you were offered a cash equivalent for the hard assets, you indicated that that was not what you were interested in doing, correct?

A. But interested, what I was interested in was monetizing, I guess what I was interested in was the assets as it relates to the stock purchase price of those assets.

Q. I don't understand, Mr. Hardcastle. You mean you didn't want to sell the assets?

A. I want to sell the assets. I want to monetize the value of the assets through a stock sale of those assets.

Q. Okay. So you want to sell the stock of Pine Water Company and Strawberry Water Company?

A. That's correct.

Q. And that was to avoid a regulatory entanglement on approval of sale of assets?

A. Certainly the regulatory approval criteria would be different for a stock sale.

Q. And in conjunction with that sale, you were willing to disclose the existing debt of the companies?

A. Well, yes, I think it is, I think it would require all, you know, a disclosure with regard to, you know, some of the financial conditions of the company, sure.

Q. And you indicated that the potential buyer requested an indemnity against nondisclosed debt?

A. I think the, my understanding was, the buyer required a general indemnity for the debts of the company.

Q. And under your stock purchase program, your concern was that you would still end up with a debt, is that your problem?

A. No. Under a stock purchase, under the stock purchase program, all the assets and all the debts the company would transfer to the new buyer.

Q. Right. And you are willing to go forward with that agreement?

A. I am certainly interested in monetizing the assets of the company through a stock sale.

Q. And you are certainly interested in disclosing the debt and liabilities of the company?

A. I think that would be part of the financial conditions.

Q. And you are willing to indemnify the prospective purchaser from any undisclosed debt or liability that may exist, correct?

A. I think I would, I think I would disclose all of the debt that is related to the company. And I think the prospective buyer could decide for himself whether he either needed or wanted an indemnity. I don't know that I would be interested in providing an indemnity for those debts.

Q. Okay. If you were, if the situation were reversed and you were purchasing the company, would you be interested in obtaining an indemnity against undisclosed debt?

A. Mr. Gliege, I think it would depend on the nature of the transaction and what I was buying and what I perceived the risks to be and it would depend on a lot of things.

Q. Now, you have already stated that Pine and Strawberry are high risk companies, correct?

A. They are certainly high risk companies because of the water supply issues.

Q. So purchasing those companies would be a high risk?

A. I would think so.

Q. And so when presented with an offer to purchase the stock subject to the disclosure of liabilities and subject to the prospect of having to indemnify against undisclosed liabilities, you decline?

MR. SHAPIRO: Objection; assumes facts not in evidence. Mr. Gliege already said the offer was to purchase the assets, not to purchase the stock. His question said there was an offer to purchase the stock.

ACALJ NODES: This is really kind of a bizarre exchange with negotiations going on on a transcribed record. It is definitely a first for me. But let --

MR. SHAPIRO: With all due respect, Judge, I think we followed up because you did ask the question of Mr. Hardcastle.

ACALJ NODES: I just didn't expect we were going to have continued negotiations on the witness stand. But...

MR. SHAPIRO: Maybe we can reach a deal.

ACALJ NODES: Yes. Hey, you know, I think there are a lot of people pulling for you. Let's make sure we, Mr. Gliege, let's make sure we have, if we are going to continue down this road, make sure we have all the facts straight. And if it is incorrect, if Mr. Gliege unintentionally states something that you don't understand to be the case, Mr. Hardcastle, you certainly feel free to amend the question accordingly based on your understanding. So let's leave it at that and see if we can reach the goal that Mr. Gliege is trying to achieve here.

MR. GLIEGE: Could you read back the question that preceded this discussion. (The record was read by the reporter as requested as follows:

Question: And so when presented with an offer to purchase the stock subject to the disclosure of liabilities and subject to the prospect of having to indemnify against undisclosed liabilities, you decline?)

THE WITNESS: I think I answered yes.

Q. So then you are not interested in selling the stock?

A. No, I am interested in selling the stock. I think the prospect of having to indemnify the debts, despite the fact that I would disclose them, I think would be problematic. And what other terms and conditions I think would be, you know, we would have to see what terms and conditions those were between the parties.

ACALJ NODES: Well, Mr. Hardcastle, I understood the question to be indemnification only regarding undisclosed debts or liabilities. Does that, is that a relevant distinction in your mind? I don't know, I guess I am the mediator now in the negotiations.

MR. SHAPIRO: We have the offer. I would be happy to provide it and you can look at it rather than guessing.

ACALJ NODES: Well, I don't know. I don't even know what to make of this negotiation on the witness stand. But in any event, let me just pose the question. If it were a stock purchase, disclosure of all liabilities and debt and indemnification only as to undisclosed debts or liabilities, is that a relevant distinction or consideration in your mind, Mr. Hardcastle?

THE WITNESS: Yes. Of course indemnification is always, is a touchy subject between the parties in a deal like this. But I think if the indemnification was reasonable and it was narrow and it was specific with regard to some of those debts, I think it certainly would be something we would certainly consider.

ACALJ NODES: Okay. Go ahead, Mr. Gliege.

MR. GLIEGE: I have the same reaction, but that's fine.