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2008 OCT 24 P 4: 45

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PINE WATER COMPANY FOR
APPROVAL TO (1) ENCUMBER A PART
OF ITS PLANT AND SYSTEM
PURSUANT TO A.R.S. § 40-285(A); AND
(2) ISSUE EVIDENCE OF
INDEBTEDNESS PURSUANT TO A.R.S.
§ 40-302(A).

DOCKET NO: W-03512A-07-0362

**NOTICE OF FILING
OCTOBER 24, 2008 LETTER
TO PINE STRAWBERRY WATER
IMPROVEMENT DISTRICT**

Pine Water Company hereby files the attached October 24, 2008 letter to the Pine Strawberry Water Improvement District in the above-referenced matter. Pine Water Company files the attached letter in this docket to further update the Commission with "further developments and pertinent information" regarding this matter consistent with the September 29, 2008 Procedural Order in this docket.

DATED this 24th day of October, 2008.

FENNEMORE CRAIG, P.C.

Arizona Corporation Commission

DOCKETED

OCT 24 2008

DOCKETED BY *mm*

By

Nam D. Jan

Jay L. Shapiro
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for Pine Water Company

1 **ORIGINAL** and thirteen (13) copies of the
2 foregoing filed this 24th day of October, 2008:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

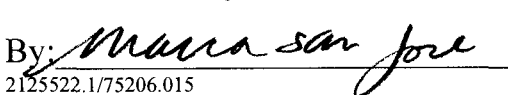
7 **COPY** of the foregoing hand-delivered
8 this 24th day of October, 2008:

9 Mr. Dwight D. Nodes
10 Assistant Chief Administrative Law
11 Judge
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Mr. Kevin Torrey, Esq.
16 Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

COPY of the foregoing mailed and
e-mailed this 24th day of October, 2008
to:

jgliege@earthlink.net;
jgliege@gliege.com
John G. Gliege
Gliege Law Offices, PLLC
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By: 
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October 24, 2008

Via Electronic Mail & Certified Mail

John G. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

**Re: Notice of Arbitration Demand under Joint Well
Development Agreement dated May 1, 2007**

Dear Mr. Gliege:

By this letter, Pine Water Company ("PWCo") hereby responds to your October 17, 2008 letter on behalf of the Pine Strawberry Water Improvement District. In that October 17, 2008 letter, the District has unilaterally and improperly attempted to terminate the Joint Well Development Agreement dated May 1, 2007 ("JWDA"). Further, the District has expressly repudiated the JWDA and refused to perform the District's obligations under that agreement. Based on the District's prior actions (as set forth in Mr. Hardcastle's October 10, 2008 letter) and the actions taken by the District in the October 17, 2008 letter, the District has breached and violated the JWDA.

I. NOTICE OF ARBITRATION DEMAND.

In accordance with ¶ 13.1 of the JWDA, PWCo hereby notifies the District of PWCo's demand for arbitration relating to claims against the District for violations and breaches of the JWDA. Further, PWCo hereby notifies the District that PWCo has selected Jason Gellman of the law firm Roshka, DeWulf and Patten as an independent and neutral arbitrator in accordance with the provisions set forth in ¶ 13 of the JWDA. We have attached a copy of Mr. Gellman's resume to this letter. We also have copied Mr. Gellman with this letter and ask him to provide a disclosure to counsel for the parties of any facts he feels are warranted relating to his role as arbitrator.

In the arbitration, PWCo will pursue claims for breach of the JWDA by the District, including the improper actions taken by the District in your October 17, 2008 letter. In the arbitration, PWCo will pursue claims against the District for (i) breach of the JWDA, including,

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but not limited to, ¶¶ 3.3, 4.2, 5.1, 5.2, 7.1, 10.1, 10.2, and 12.1 of the JWDA; (ii) breach of the covenant of good faith and fair dealing; (iii) improper termination of the JWDA; (iv) misrepresentation and breach of the warranties contained in ¶ 7.1 of the JWDA; (v) breach of the Escrow Instructions dated February 8, 2008; and (vi) bad faith. PWCo may assert additional claims as the proceedings progress. In terms of damages, PWCo intends to seek specific performance of the JWDA and Escrow Instructions, including payment of the remaining funds deposited in the escrow account with Pioneer Funding to PWCo for completion of the K2 Project. Further, PWCo will seek damages resulting from the District's improper actions and breaches of the JWDA, including (i) costs incurred in performing the JWDA, (ii) costs incurred in reliance on performance of the JWDA by the District and the District's representations and warranties, (iii) PWCo's costs incurred in the pending ACC proceedings relating to the K2 Agreement, and (iv) other similar costs and damages in amounts to be proven in arbitration. PWCo also will seek recovery of its attorney's fees and legal costs associated with the litigation it must now pursue.

On behalf of the District, your October 17, 2008 letter states that "[i]t would be the District's intent that if any conflicts between the parties cannot be resolved, then the matters must be resolved in the manner set forth in the JWDA." Under ¶ 13.2 of the JWDA, the District "may, by written notice within ten (10) business days after receipt of such written notice by the first Party, appoint a second arbitrator." Under the arbitration provisions set forth in the JWDA, the parties must appoint neutral, impartial and independent arbitrators, who, in turn, will select the third member of the arbitration panel. In the event that the District intends to appoint a second arbitrator, the District must provide written notice of such appointment by November 4, 2008. After selection of the arbitrators or upon expiration of such ten day period, the arbitration hearing shall be conducted in accordance with ¶¶ 13.4 and 13.5 of the JWDA.

This arbitration demand is necessitated by the District's prior actions in violation of the JWDA and the District's improper actions taken in your October 17, 2008 letter. That October 17, 2008 letter is replete with factual misstatements and flawed legal arguments. In order to set the record straight, I have addressed and responded to the numerous errors in the District's October 17 letter point by point.

II. TIME EXTENSION UNDER THE JWDA.

On page 1 of the October 17 letter, you state that PWCo "is acting at its own risk in attempting to unilaterally extend the project schedule and timeline under paragraph 3.3 of the Joint Well Development Agreement and all amendments thereto...and in proceeding with the execution of a drilling contract for the K2 well, requesting disbursement of the escrow funds pursuant to the Escrow established under the JWDA... and completion of the K2 Project under the Joint Well Development Agreement." Boiled down, the District's position as stated in the October 17 letter is that PWCo is at fault for performing its obligations under the JWDA. The

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District's disregard of the JWDA could not be clearer, and your October 17 letter provides further evidence of the District's breaches of the JWDA.

What's more, the District's position is based on an incorrect interpretation of ¶ 3.3 of the JWDA in suggesting that PWCo unilaterally extended the project schedule without proper authority. Under the plain language of ¶ 3.3 of the JWDA, time extensions are automatic and mandatory for delays caused by circumstances beyond PWCo's control:

Subject to Section 3.2, PWCo shall exercise commercially reasonable efforts to construct and complete or cause to be completed, the Project in accordance with the timeline set forth in Attachment 3. The deadlines set forth in Attachment 3 **shall be extended** for any period of time that progress or design, processing or construction of the Project is reasonably delayed, despite PWCo's reasonable efforts, due to unexpected delays in scheduling well drilling, unexpected delays in obtaining equipment and supplies necessary for the Project or unnecessary delays caused by material obstacles encountered during the actual drilling of the K2 Well Project. **The timeline shall also be extended for any period of time** the Project is reasonably delayed due to inclement weather or other natural disaster, unavailability or shortage of labor or materials, national emergency, fire or other casualty, natural disaster, war, **unforeseen delays or actions of governmental authorities** or utilities, riots, acts of violence, labor strike, injunctions in connection with litigation, or the failure of PSWID to timely pay or deposit any amount required hereunder, **or any other matters outside of the reasonable control of PWCo that renders performance within the timeline commercially impracticable.**

JWDA at ¶ 3.3 (emphasis added). Under this provision, PWCo does not need to request a time extension from the District, and the evidence is virtually undisputed that any delays in completion of the K2 Project beyond the completion date set forth in the JWDA are the result of various delays beyond PWCo's control, including the delay tactics and actions by the District.

III. BREACH OF WARRANTY AND MISREPRESENTATION.

Next, the District asserts that "it is obvious that declaration of the illegality [of the JWDA] by a court would be a defense to any claims for breach of warranty or misrepresentation." The District goes on to contend that "[i]f the JWDA is binding, then the District has certain obligations to undertake. If the District is not legally valid, then the District has no further obligations under the JWDA and is entitled to a return of the money in the Escrow which was established pursuant to the JWDA." Once again, the District's analysis is flawed.

For starters, the District already has conceded that the JWDA is valid by contending that any disputes with PWCo must be resolved under the arbitration provisions contained in the

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JWDA. Obviously, if the JWDA was unenforceable completely, then the arbitration provisions would not be effective. Further, the alleged illegality and unconstitutionality of the JWDA does not nullify the representations and warranties made by the District to PWCo in ¶ 7.1 of the JWDA. Nor would such claims impact PWCo's reliance on the District's representations and warranties contained in ¶ 7.1 of the JWDA. The District Board members made those representation and warranties to PWCo within the scope of their authority, and PWCo justifiably relied on those representations and incurred substantial costs in performing the JWDA. PWCo's justifiable reliance on ¶ 7.1 of the JWDA is demonstrated further by the fact that District continued to perform under the JWDA for more than one year without termination of the JWDA.

Based on the October 17 letter, the District unilaterally has declared that the JWDA is unconstitutional and illegal. In taking that position, the District has admitted that its representations and warranties as specifically stated in ¶ 7.1 of the JWDA are false and misleading. As a matter of law, therefore, the District is liable to PWCo for misrepresenting and warranting to PWCo that "[t]he PSWID Board (i) has duly authorized and approved the execution and delivery of, and performance of its obligations under this Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement." JWDA at ¶ 7.1.3. The District also misrepresented that "[t]he consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona..." JWDA at ¶ 7.1.4. The question of whether the funding provisions contained in the JWDA are illegal is separate from the question of whether the District breached its express warranties and representations as stated in the JWDA, and whether PWCo relied on such representations and warranties. Under these circumstances, the District's decision to terminate the JWDA for alleged illegality and lack of authority is a *per se* violation of ¶ 7.1 of the JWDA, which renders the District liable to PWCo for damages.

IV. COMPLIANCE WITH COMPETITIVE BIDDING STATUTES.

On page 2 of the October 17 letter, the District asserts that "no evidence of such compliance [with competitive bidding statutes] has been presented to the District." The District goes on to state that "the District will resist any efforts on the part of Pine Water Company to draw funds out of the Escrow to pay for any contracts not entered into in accordance with the JWDA." The District's refusal to authorize disbursement of the escrow funds clearly violates the JWDA.

Unfortunately, in making these arguments, the District has ignored the controlling terms of the JWDA and Escrow Instructions relating to competitive bidding. To start, the JWDA does not mandate proof of compliance with competitive bidding statutes as suggested by the District. Rather, ¶ 4.2.1.4 of the JWDA provides: "PWCo may make draws from the Escrow to fund contracts entered into in accordance with this Agreement by presenting a written statement

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representing and warranting that the amount is due and owing under such contract or contracts, specifying the work covered by the draw and the contract associated therewith.”

In its October 10, 2008 letter, PWCo provided notice of its intent to proceed with execution of a drilling contract for the K2 well, and disbursement of the escrow funds. PWCo conducted its procurement and selection of the drilling contractor in accordance with the competitive bidding requirements contained in Title 34 of the Arizona Revised Statutes. Neither the JWDA nor the Escrow Instructions require PWCo to provide proof of compliance with competitive bidding requirements prior to submitting a draw request to the Escrow Agent. Rather, ¶ 2(b) of the Escrow Instructions states that the “[d]raw request shall include the following: (i) A statement that in soliciting and contracting with the contractor the procedures and requirements set forth in Title 34, Chapters 2 and 3, Arizona Revised Statutes have been applied and satisfied as if PSWID had contracted directly for the work or materials.” PWCo has complied fully with Title 34 in selection of the drilling contractor, and PWCo fully intends to provide such verification statement as required under the Escrow Instructions upon submission of a draw request to the District and Escrow Agent.

V. PWCO HAS NOT BREACHED THE JWDA.

In the October 17 letter, the District asserts eight alleged breaches of the JWDA by PWCo. Each of these claims is flawed, both factually and legally. I have addressed each of these flawed claims below in an effort to clarify the issues. PWCo will further substantiate these points during the arbitration proceedings.

First, the District claims that PWCo has breached the JWDA by “failure to provide information showing compliance with the laws of the State of Arizona pertaining to public contracts.” Under the express provisions of the JWDA and Escrow Instructions, and for the reasons noted above, that claim is without any merit. PWCo’s statement of compliance with competitive bidding statutes is due upon submission of a draw request to the Escrow Agent, which has not occurred yet. The District’s termination of the JWDA before any such statement was required under the JWDA and Escrow Instructions is further evidence of the District’s improper and bad faith actions.

The District’s second and third breach claims are that PWCo failed to complete the work on time and that the District has determined that the Project cannot be completed within two years of execution of the JWDA. As stated above, however, time extensions are automatic and mandatory for circumstances beyond PWCo’s control under ¶ 3.3 of the JWDA. The evidence clearly demonstrates that any delays in completion of the K2 Project beyond the completion dates set forth in the JWDA are the result of various delays beyond PWCo’s control, including the delay tactics and actions by the District. The District’s attempt to cancel the JWDA for project delays caused by the District’s own actions is a textbook example of an improper and bad faith termination under Arizona law, making the District liable to PWCo for damages. I would

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note, however, that notwithstanding PWCo's right to extend the timeline per the JWDA, PWCo still believes that the K2 Project could be completed within the agreed Project schedule if PSWID were not refusing to proceed.

Fourth, the District claims that PWCo has breached the JWDA by a "[l]ack of demonstrated rights of way for Access [sic] to the K2 site." On this claim, the JWDA does not impose any obligation on PWCo to demonstrate legal access to the K2 site. Rather, ¶ 4.2.1.1(c) states that a condition to deposit of the \$300,000 in escrow is that PWCo must demonstrate that "title to the well site for the Project has been conveyed to PWCo, including easements for ingress, egress, maintenance, repair and replacement..., which transfer shall occur within sixty (60) days or receipt of ACC approval of this Agreement...." PWCo already has obtained title to the K2 site and the District waived any further conditions by depositing the \$300,000 in escrow under the February 8, 2008 Escrow Instructions. Under the JWDA, PWCo does not have any obligation to demonstrate right of way access to the K2 site at this time, and the District's termination of the JWDA for that reason is invalid. We note, however, that PWCo remains prepared to conclude a transaction based upon an existing valid offer to purchase the remaining property necessary for access to the K2 Project site.

Fifth, the District asserts that PWCo has provided "no plan approvals from appropriate governmental entities for the well drilling." Once again, however, the JWDA does not impose that obligation on PWCo at this time. Rather, PWCo represented that "[a]ll permits, authorizations and approvals required for construction of the Project in accordance with the Plans have been or will be obtained prior to the start of construction." JWDA, ¶ 7.2.5. Obviously, PWCo has not started construction, and PWCo has obtained or will obtain any and all required plan approvals prior to start of construction.

Sixth, the District claims that PWCo breached the JWDA because "no adequate budgets or revision of the budgets for the project have been submitted to the District." On this claim, the District flatly disregards ¶ 4.1 of the JWDA:

PWCo shall prepare a preliminary estimated budget for the total cost of the K2 Well Project within sixty (60) days of the date of this Agreement (the "Budget"). PSWID shall be entitled to approve the Budget, which approval shall not be unreasonably withheld. PWCo shall update and revise the Budget 30 days prior to commencing work on the Project and every ninety (90) days thereafter through completion or termination of the Project....

PWCo provided the District with a preliminary budget several months ago, and PWCo does not have any obligation to revise that budget until 30 days prior to start of work on the K2 well.

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Seventh, the District claims that PWCo anticipatorily repudiated the JWDA based on some unidentified statements by Mr. Hardcastle relating to use of the test well as a production well. Frankly, this claim is absurd. As stated in the company's October 10 letter, PWCo fully intends to complete the K2 project and did not repudiate the JWDA in any way, shape or form. It appears that that District has misunderstood Mr. Hardcastle's prior statements that PWCo may retain the test well for use as a production well and then drill a second production well, rather than converting the test well into a production well. That is not a repudiation of the JWDA, but complies fully with ¶ 2.3 of the JWDA ("... a permanent well shall be drilled, cased and equipped and all facilities necessary to interconnect such well to the PWCo transmission and delivery system shall be constructed..."). In short, in the event a sustainable yield is achieved from the test well, PWCo fully intends to meet its obligations to construct a permanent production well under the JWDA.

Finally, the District claims that PWCo has breached the JWDA by failing to "provide notice of the availability of funding for that portion of the Project which is to be paid by Pine Water Company." The JWDA does not impose such requirement on PWCo. Rather, ¶ 4.2.1.1(b) states that a condition to deposit of the \$300,000 in escrow is that PWCo must notify the District that "funding for the Project is available upon terms and conditions acceptable to PWCo within sixty (60) days of receipt of ACC approval of this Agreement..." Again, the District waived that condition by depositing the \$300,000 in escrow under the February 8, 2008 Escrow Instructions. Further, ¶ 4.3.1 provides that "[f]unding for the Project provided by PWCo shall be financed through equity, debt and/or advances or contributions in aid of construction as determined by PWCo in its sole and absolute discretion..." Although not required by the JWDA, PWCo will provide proof of financing availability for the portions of the Project to be financed by PWCo.

It also should be noted that many of these breach claims asserted by the District, even if true, do not rise to the level of a "material" or "substantial" breach of the JWDA, warranting termination of the JWDA. In fact, the District does not have authority to terminate the JWDA for several of these claims under ¶ 5.2.1 of the JWDA, which expressly limits the District's termination rights.

VI. "DENUNCIATION" OF THE JWDA BY THE DISTRICT.

On page 3 of the October 17 letter, the District "denounces" the JWDA based on four legal conclusions asserted by the District. These legal conclusions asserted by the District are not supported by the underlying facts or Arizona law.

A. The District's Conflict of Interest Claims Are Meritless.

The District claims that the JWDA is null and void because of alleged "conflicts of interest of Messrs Richie and Brenninger in their participation and negotiation of the JWDA."

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The District has not identified any laws supporting this argument, but, presumably, the District relies on Ariz. Rev. Stat. §§ 38-503, 38-504 and/or 38-511. Those statutes simply do not apply, and PWCo will demonstrate that point during the arbitration proceedings, if necessary.

To summarize, § 38-503 does not apply on its terms to either Mr. Richie or Mr. Brenninger because they did not have a "substantial interest" in the JWDA when they were Board members of the District. Put simply, Mr. Richie did not have a substantial interest in the JWDA when it was approved by the District on or about May 1, 2007. Likewise, Mr. Brenninger was not a Board member of the District when the JWDA was approved and executed by the District in May 2007. Thus, neither Mr. Richie nor Mr. Brenninger violated § 38-503. Similarly, § 38-504 does not apply to either Mr. Richie or Mr. Brenninger because they did not "represent another person for compensation before a public agency" as required by that statute. In Mr. Brenninger's case, he also was not "directly concerned" and did not personally participate in the negotiations of the JWDA or the approval of it. Mr. Brenninger also was not a member of the District's Water Development Committee, which took the lead on development of the K2 Project and negotiation of the JWDA.

Based on the October 17 letter, it appears that the District may be relying on § 38-511 in declaring the JWDA to be null and void based on allegations relating to Mr. Brenninger. Again, however, § 38-511 does not apply because Mr. Brenninger was not "significantly involved in initiating, negotiating, securing, drafting or creating" the JWDA. It also bears emphasis that these alleged conflicts of interests were raised more than one year ago, and the District continued to perform under the JWDA, including deposit of the escrow funds in February 2008. The District's continued performance under the JWDA demonstrates the District's belief that these alleged conflicts of interests were not substantiated. Under these circumstances, the District's conflict of interest claims are meritless.

B. The JWDA Binds the District.

Next, the District asserts that "prior Boards of Directors cannot bind the present board to the expenditure of public funds." The District does not cite any legal authority in support of that claim, and this argument is flawed for several reasons. To start, the JWDA is legally binding and enforceable against the District. Your reference to a change in the Board of Directors does not bear on the enforceability of the JWDA against the District. You conceded that exact point in your October 17 letter by stating "[i]f the JWDA is binding, then the District has certain obligations under it." Put simply, the argument that a change in the Board of Directors renders the JWDA unenforceable is flawed under Arizona law.

Further, the prior District Board previously funded the District's obligations under the JWDA by depositing \$300,000 in the escrow account. That means that the prior Board did not bind the current Board to expenditure of future public funds as claimed in your October 17 letter. Rather, the District already has funded and spent the money to pay for the K2 Project. As stated

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in the Escrow Instructions, "PWCo and PSWID desire[d] to establish an escrow for the deposit of the PSWID Funds and to create a mechanism to govern the disbursement of PSWID funds to pay contractors for their work on certain aspects of the project." Escrow Instructions, Recital C. The District's attempt to invalidate the JWDA on this basis is improper.

C. The District's Constitutional Claims Are Illusory.

Finally, the District has attempted to void the JWDA based on "constitutional questions of the validity of the agreement because of loan of funds to a public service corporation," and "the issue of delegation of power to expend funds out of public treasury to a private entity." In the October 17 letter, the District did not provide any factual or legal support for these claims. Thus, it appears that the District has terminated the JWDA based on constitutional "questions" or "issues" relating to the JWDA, as opposed to any findings or determinations by a court or tribunal. Obviously, raising questions or issues as to the constitutionality of the JWDA does not justify termination of the agreement.

It also appears that the District has rehashed its arguments relating to Article 9, § 7 and Article 9, § 10 of the Arizona Constitution. Those arguments fail by all accounts, as illustrated by the fact that Arizona Corporation Commission Assistant Chief Administrative Law Judge Dwight Nodes rejected those arguments in his recommended opinion on the pending encumbrance and financing application before the Commission. PWCo and Commission Utilities Division Staff extensively addressed those arguments in its closing brief filed in the ACC proceedings.

To summarize, the so-called "gift clause" contained in Article 9, § 7 of the Arizona Constitution provides that "[n]either the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." The District, however, is expressly exempt from prohibitions under the "gift clause." See Ariz. Const. Art. XIII, § 7. Further, Article 9, § 10 provides that "[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation." Ariz. Const. Art. IX, § 10. That provision is not an absolute prohibition on the District's funding of \$300,000 for the K2 test well. As a matter of law and fact, the District's funding of the K2 Project under the JWDA does not violate Article 9, § 10, and the District does not have authority to unilaterally terminate the JWDA based on these constitutional "issues" under ¶ 5.2.1 of the JWDA.

VII. CONCLUSION.

In conclusion, the District has (i) unilaterally and improperly attempted to terminate the JWDA, (ii) the District has expressly repudiated the JWDA and refused to perform the District's obligations under that agreement and (iii) the District's prior actions and the actions taken in the

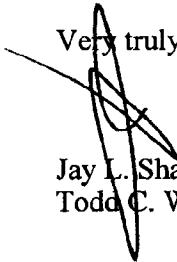
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October 17, 2008 letter have breached and violated the JWDA. PWCo will seek recovery of any and all damages relating to the District's actions, including specific performance and release of the escrow funds. As soon as the arbitrators are assigned, the parties will need to work with the panel to schedule the hearing, exchange documents and witness lists and other similar issues.

Finally, we also note that your references to the District's proposed acquisition and condemnation of the assets of PWCo and Strawberry Water Company have no bearing on the arbitration proceedings. Specifically, we disagree with your statement that "this exercise in debating over the efficacy of the JWDA will become moot upon the conclusion of that acquisition and that the expenditures to litigate this matter will consume funds which could be available for purchase of the water companies, thus reducing the amount available to the District to conclude the purchase." We fully expect that the arbitrators will find in PWCo's favor, including issuance of an order requiring the District to perform under the JWDA (including ordering the District to authorize release of the escrow funds) and issuance of a judgment requiring the District to pay for PWCo's monetary damages suffered as a result of the District's actions, breaches and bad faith conduct. Any such amounts owed by the District, even should it acquires all of PWCo's assets, will be *separate from and in addition* to the determination of fair market value that will have to be paid by the District for acquisition and condemnation of the assets of PWCo and Strawberry Water Company.

Very truly yours,



Jay L. Shapiro
Todd C. Wiley

Enclosure

cc: Jason Gellman, Esq. (w/encl.)
Mr. Robert T. Hardcastle (w/ encl.)

2124044.1

