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6 **John G. Gliege (#003644)**
7 **Attorney for Pine Strawberry Water Improvement District**

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF GILA**

10 **PINE STRAWBERRY WATER)**
11 **IMPROVEMENT DISTRICT, a Tax Levying)**
12 **Public Improvement District pursuant to)**
13 **A.R.S. §§ 48-901 to 48-966 inclusive, and §§)**
14 **48-1011 to 48-1019 inclusive and all)**
15 **amendments and supplements thereto,)**

Case NO CV 2008-375

COMPLAINT IN CONDEMNATION
(Eminent Domain) *no fee*

16 **Plaintiff,**

17 **v.**

18 **PINE WATER CO., INC., an Arizona)**
19 **Corporation; STRAWBERRY WATER CO.,)**
20 **INC., an Arizona Corporation; BROOKE)**
21 **UTILITIES, INC., an Arizona Corporation;)**
22 **COUNTY OF GILA, a political subdivision of)**
23 **the State of Arizona; JOHN DOES 1 through)**
24 **10; and BLACK AND WHITE)**
25 **PARTNERSHIPS 1 through 10,)**

26 **Defendants.**

27 COMES NOW the Plaintiff, Pine Strawberry Water Improvement District (PSWID), by
28 and through its attorney undersigned, and for its cause of action against the above-named
29 Defendants, alleges as follow:

I

Plaintiff is a municipal corporation of the State of Arizona and is vested by law with the
authority to condemn the assets of a water utility company or undertaking. The Plaintiff's

1 corporate limits are located entirely within the County of Gila, State of Arizona.

2 **II**

3 The Defendant Pine Water Co., Inc. ("PWC") is an Arizona corporation doing business in
4 the County of Gila, State of Arizona, and is the holder of a Certificate of Convenience and
5 Necessity issued by the Arizona Corporation Commission covering a certain portion of Gila
6 County described in said certificate.

7 **III**

8 The Defendant Strawberry Water Co., Inc. ("SWC") is an Arizona corporation doing
9 business in the County of Gila, State of Arizona, and is the holder of a Certificate of
10 Convenience and Necessity issued by the Arizona Corporation Commission covering a certain
11 portion of Gila County described in said certificate.

12 **IV**

13 The Defendant Brooke Utilities, Inc. ("BUI") is an Arizona corporation doing business in
14 the County of Gila, State of Arizona. Upon information and belief BUI owns certain property
15 used and useful in the operation of PWC and SWC. Upon information and belief BUI owns
16 100% of the shares of stock of PWC and SWC.

17 **V**

18 Upon information and belief, all of the real and personal property and all other assets of
19 the Defendants PWC, SWC, and BUI within the areas described in the Certificates of
20 Convenience and Necessity ("CC&N") of PWC and SWC used or useful in providing water
21 services to the public ("Subjects of Condemnation") are owned by the Defendants PWC, SWC,
22 and BUI as their interests may appear. That said real and personal property constitutes the entire
23 operating systems used and useful in providing domestic water service within the CC&Ns of
24 PWC and SWC.

25 **VI**

26 Defendant County of Gila is a political subdivision of the State of Arizona. Upon
27 information and belief, the Defendant County of Gila claims some interest in the property of
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29

1 Defendant PWC in the Described Area by reason of real and personal property taxes.

2 **VII**

3 Upon information and belief, Defendants John Does 1 through 10 and Black and White
4 Partnerships 1 through 10 are individuals, corporations, limited liability companies, general
5 limited partnerships, associations, governmental bodies or other entities that may claim some
6 interest in the property of Defendants PWC, SWC, and BUI used and useful in the provision of
7 domestic water to the customers of PWC and SWC.

8 **VIII**

9 This action is brought and the Plaintiff has a right to maintain this action pursuant to the
10 authority set forth in *Titles Twelve and Forty-Eight of the Arizona Revised Statutes*.

11 **IX**

12 The acquisition by eminent domain of the Subjects of Condemnation was duly authorized
13 by the Board of Directors of the Pine Strawberry Water Improvement District by resolution duly
14 adopted on July 3, 2008.

15 **X**

16 The use to which the Subjects of Condemnation are to be applied by the Plaintiff is a use
17 authorized by law and is a public use.

18 **XI**

19 The Subjects of Condemnation in this action are:

20 The real property of PWC, SWC, and BUI; personal property of PWC, SWC, and BUI, if any;
21 water rights of PWC, SWC, and BUI if any; any rights to surface water from any source
22 including but not limited to the Central Arizona Project; water wells and pumps of PWC, SWC,
23 and BUI, if any; franchises of PWC, SWC, and BUI, if any; rights of PWC, SWC, and BUI
24 under leases, if any; water plants, substations and water distribution systems of PWC, SWC, and
25 BUI, if any; rights of PWC, SWC, and BUI under any other contracts, if any; intangible rights
26 of PWC, SWC, and BUI, if any; and all other property of PWC, SWC, and BUI whatsoever,
27 including customer accounts, books and records, used and useful in providing water utility
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1 services to the public within the area described in the CC&Ns of PWC and SWC, including all
2 right, title and interest in the Certificate(s) of Convenience and Necessity as issued by the
3 Arizona Corporation Commission authorizing construction, operation and maintenance of a
4 water utility and distribution system within the area described in the CC&Ns. The real property
5 interests include, without limitation, fee simple title in any property owned by PWC, SWC, and
6 BUI; PWC, SWC, and BUI's interest under easements benefiting or used by PWC, SWC, and
7 BUI; PWC, SWC, and BUI's interest under any leases or other occupancy agreements relating to
8 real property. All right, title and interest of the other Defendants in and to the Subjects of
9 Condemnation. The area described in the CC&Ns of PWC and SWC and the Subjects of
10 Condemnation are generally referred to as the Pine and Strawberry Water Companies.

11 XII

12 That the real property included in this proceeding includes that property set forth in the
13 appraisal reports as being a part of the used and useful property of PWC and SWC or property
14 of BUI. The real property subject to description is set forth in Exhibit A attached hereto.

15 XIII

16 The acquisition by eminent domain of the Subjects of Condemnation by the Pine
17 Strawberry Water Improvement District is necessary to provide for the public health, safety and
18 welfare through the cost efficient treatment and provision of domestic water by the PSWID to its
19 residents, businesses, property owners, and other persons who may desire water within the
20 boundaries of PSWID. That the use to which the property is to be applied is a use authorized by
21 law. The taking is necessary to such use. That although the property is presently owned by
22 private water companies, the public use of PSWID in creating a consolidated public utility is a
23 more necessary public use.

24 XIV

25 In accordance with *A.R.S. § 12-1116*, Plaintiff sent to PWC, SWC, and BUI on October
26 17, 2008 an offer to purchase the Subjects of Condemnation, including compensation for one
27 individual parcel of property valued separately, all remaining real property interests having been
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1 included in the Subjects of Condemnation, for just compensation of \$2,056,000.00 plus the
2 value of the businesses as "going concerns" of \$498,292.00, for a total offer of \$2,554,292.00.
3 Enclosed with the offer were copies of the appraisals of Coe & Van Loo, Inc., economists.com
4 and Morris A. Williams that support the offer. On or about November 6, 2008 Mr. Robert
5 Hardcastle on behalf of PWC, SWC, and BUI informed Mr. William Haney, Chairman of the
6 Board of PSWID that the offer was rejected by PWC, SWC, and BUI. Therefore, pursuant to
7 the foregoing statute PSWID has the right to commence these proceedings.

8 WHEREFORE, Plaintiff prays for Judgment against all Defendants as follows:

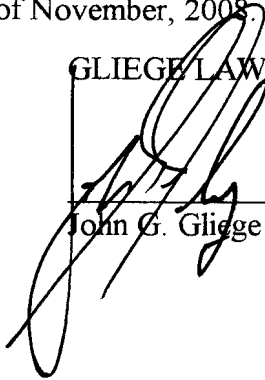
9 A. That the property and rights of Defendants described herein as the Subjects of
10 Condemnation, and the real property, and the Certificates of Convenience and Necessity be
11 condemned for public use as set forth herein; and that title to said property and rights be vested
12 in the Plaintiff PSWID;

13 B. That the just compensation to be paid by Plaintiff for condemnation of said
14 property and rights of Defendants be assessed and ascertained in accordance with the law; and

15 C. For such other and further relief as this Court deems just and appropriate under the
16 circumstances of this case.
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18 RESPECTFULLY SUBMITTED this 12th day of November, 2008.

19 GLIEGE LAW OFFICES, PLLC

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22 _____
23 John G. Gliege
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