

Information Regarding the Ownership of Wells on Gila County parcel 301-31-020C

The parcel 301-31-020C, (hereinafter referred to as "020C") was purchased by Marion B Rogers from Gila County in a tax lien sale on November 19, 2001 (Exhibit A). (Marion died in June 2006; it is currently owned by myself, and my two sisters.) The previous owner of the property, "Sundance Development Company"(hereinafter referred to as "SDC") defaulted on the tax payments in 1996, and subsequently lost title to the property (Exhibit B). The Record of Survey (ROS 3591)(exhibits C and D) recorded with Gila County indicates three wells on the parcel. A search of the water well records available on the ADWR website indicates two wells in section 30 that were registered to "SDC". The cadastral location is entered as "A(12-9) 30BBA". This places the approximate location of the two wells in the same area as "020C". The registration numbers of the two wells are: 55-513432, and 55-513856 (Exhibits E and F). The drilling of the '432 well was completed on 3/7/1986. The drilling of the '856 well was completed on 4/10/1986. Both well documents indicate the owner of the well as "SDC". The owner of the land is identified as "same" (SDC) on both documents. The person filing the notice is also identified as owner and "same" (SDC) on both documents. After considerable research, I identified the signature as being that of Jimmy G Fernandez, and after some additional research, I located a phone listing, and contacted Mr. Fernandez on 12-28-2008 to confirm that the two wells were drilled on parcel "020C". He remembers personally testing one of the wells. Sometime after he tested the well, "SDC" fell into default and was dissolved. Mr. Fernandez is unaware of what transpired past that point (approx. 1989). Mr. Fernandez has signed a declaration attesting to the history of the well (Exhibit G).

Both wells ('432 and '856) were drilled on parcel "020C". I believe that the first well drilled ('432) did not produce sufficiently and so the driller capped it, moved westward and drilled well '856. Examination of photos(exhibit H) of the parcel shows the active well and the "capped" well to be of similar height, diameter, construction, and age; minus the concrete slab and pump attachments present on the active well. The third well on parcel "020C" appears to be of a much older date and may be one of the "Simser" wells which were drilled in the approximate area of the parcel "020C", most likely 55-644432 (Exhibit I).

The documents provided by Mr. Hardcastle of Brooke Utilities (hereinafter referred to as "Brooke") relate to wells, easements and parcels formerly owned by E&R Water Company (hereinafter referred to as E&R) which serviced this area (Exhibit J). "E&R" was sold to "Brooke", which is currently doing business as (dba) Pine Water Company (hereinafter referred to as "PWCo"). **Signs posted at the well site on "020C" list a registration number as 55-613688, and numbers painted on the well casing indicate "A12-9-19". Both numbers are incorrect for this well** (Exhibit K). The "A12-9-19" would indicate a well in section 19 of Arizona Township 12 North, Range 9 East. This is the section that is directly north of section 30, so this number does not apply to a well in section 30. The number "55-613688" is listed as being within the "Cimmaron Pines" subdivision, not "Brookview Terrace" where "020C" is located. The cadastral is called out as "A(12-9)30BBD". This would be in the SE quarter of the NW quarter of the NW

quarter of section 30. This places it considerably south of "020C". The true identity of registration number 55-613688 can be found by reference to the "Statement of Claimant" (ADWR 39-42477) (Exhibits L, M and N) which shows a well labeled "QB-2" located in the NW corner of the Cimmaron Pines subdivision. The "Registration of Existing Well" (ADWR 55-613688) document (Exhibit O) has the text "A(12-9)30 BBD QB 2" on the upper right corner. The well was original drilled for Mr Quinn Black of Terra Development (ref: ADWR 35-83764), hence the "QB". Terra applied to drill four wells, but it appears only two "Report of Well Driller" documents were filed. Examination of this general area shows three wells registered to "PWCo": 55-613691, 55-613695, and 55-613689. Two of the wells, '691 and '695 are within a fenced enclosure and appear to be feeding a large green storage tank labeled with "A12-9 30bbd WB-2" (Exhibits P and Q). The location of these two wells is on the northwest corner of the "Cimmaron Pines" subdivision (ref: ROS 1024)(exhibit R) Note that a third unidentified well is shown in the detail on ROS 1024 further SE of wells '691 and '695. The third well mentioned previously, '689, is located in a small cinderblock well house with the identifying "A12-9 30bbd WB-3" painted on the east side wall (Exhibits S and T). This well is located on lot 21 as indicated on the map 301-31-01. This is the parcel referred to Mr. Hardcastle's letter of 12-17-2008 (Exhibit J, page 9) as parcel number 10. Someone has highlighted a box around the text and penciled "301-31-020C" next to it. This is an incorrect annotation, as the parcel should be "301-31-021" A search of parcels on the Gila County website turns up no documents on this parcel. However, further research shows tax number 902-31-276 which shows parcel "021" as being on the tax rolls of "Brooke". The parcel is 35 feet by 35 feet and on the original plat map (PLAT-0138, Exhibit U) is shown and labeled as "TRACT "C" to be conveyed to water company as well & pump site". The location appears to have later shifted north slightly to the NE corner of parcel 23A as shown on map 301-31-01 (Exhibit V). The Statement of Claimant of "E&R" recorded with ADWR (39-42477)(Exhibit L,M and N) lists three wells in this general area, however no wells are shown in the area of parcel "020C".

Also note that well 55-613689 appears to have the wrong registration posted as the recorded documents refer to "lot 17 Cimmaron Pines" and a completion date of Sept. 1980. The well house is actually located on lot 21 Brookview Terrace and has been in service since the 1960's (ref: personal knowledge Gary Rogers). The correct registration for this well is most likely 55-613691 since it refers to "Brookview Terrace #1 Tract C".

In Mr. Hardcastle's letter of 12-17-2008 (Exhibit J, page 2 top paragraph), he speaks of "Brooke's, and its predecessors, exclusive, known, open and notorious operation of the well since 1982". And he further continues, "Under theses circumstances it is highly likely that a prescriptive easement has been established." **However, the well has not been in operation since 1982, because it was drilled in 1986. Further, it fell to tax lien and so during that time, no one would have objected to the well pump operation. Certainly Gila County was unaware of any well usage, or easement, as none were conveyed upon sale of the parcel to Marion Rogers.** Shortly after Marion Rogers purchased the property ("020C"), he began the process to determine well ownership. Documents indicate he was in contact with ADWR in 2002 (well report dated 09/03/2002 with "SDC" wells '432 and '586 marked)(Exhibit W). Since the well data

posted was blatantly false and misleading, it created delays and difficulties in establishing ownership.

Since I had worked for the City of Phoenix Water Production East as a Well Operator Grade II, I had a knowledge of laws, both state (ref: ARS 40-491), and Federal (ref: USC 42 sec 300i-1) regarding “tampering” with water supplies. Any attempts at disconnection, or efforts to block access to, or stop usage of the well were therefore blocked until such time as legal determination of ownership (and legal authority to stop the pumping) had been made. Marion Rogers passed away in June 2006, but I believe before that time he contacted “Brooke” to have them address the issue. Since then, I have made efforts to contact “Brooke”. In December 2007, I retained Mr. Mark Hall, atty., in an attempt to resolve the issue as personal representative of the estate. Mr. Hall contacted Mr. Hardcastle in January 2008 by phone, as well as by email(Exhibit X). Mr. Hardcastle did not respond with any further information. Mr. Hall did not follow up, and ceased communications with me after leaving town suddenly to pursue other interests. Mr. Hall’s partner, Ron Matheny, atty. eventually was able to recover the documents that had been provided to Mr. Hall by me. Prior to then, I had spoken with two of “Brooke’s” local well operators who were at the wellsite, and they had said that they would make a report to Mr Hardcastle. No response was ever forthcoming from Mr. Hardcastle. In March 2008, I engaged David Brown atty. to further pursue the matter. David has a letter (Exhibit Y), and teleconferenced with Mr. Hardcastle without resolving the issue..

Perhaps you can clarify this issue for all parties.

Please contact me if you need further information.

Gary B Rogers