

0000093977

ORIGINAL

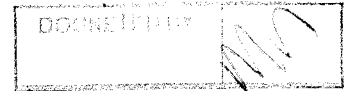
RECEIVED

1 FENNEMORE CRAIG, P.C.
 2 Jay L. Shapiro (No. 0146500) FEB 23 P 4: 40
 3 Todd C. Wiley (No. 015358)
 3003 North Central Avenue, Suite 2600
 Phoenix, Arizona 85012
 Telephone (602)916-5000
 Attorneys for Pine Water Company

Arizona Corporation Commission

DOCKETED

FEB 23 2009



BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: W-03512A-07-0362

STATUS REPORT

13 Pine Water Company ("PWCo") submits the following status report relating to (i)
 14 the arbitration between PWCo and the Pine-Strawberry Water Improvement District
 15 ("District") and (ii) the District's condemnation lawsuit.

16 PWCo previously provided the Commission with reports on the status of the Pine-
 17 Strawberry Water Improvement District's efforts to condemn PWCo and Strawberry
 18 Water Company ("SWCo") and the dispute concerning the May 1, 2007 Joint Well
 19 Development Agreement ("JWDA"). The purpose of the JWDA was for PWCo and the
 20 District to jointly develop the K2 well site in Strawberry, Arizona for use in providing
 21 water utility service by PWCo. As stated in the JWDA, the District and PWCo estimated
 22 that the total cost of the K2 Project would be \$1,300,000. Under the JWDA, the District
 23 agreed to fund \$300,000 for initial construction and development of the K2 well site,
 24 including construction of a test well; and, PWCo agreed to fund the completion and
 25 construction of the K2 production well. PWCo also agreed to refund the District's initial
 26

1 investment of \$300,000. Under the JWDA, the District placed \$300,000 in escrow for
2 disbursement under the JWDA. In turn, PWCo incurred substantial costs in performing
3 its obligations under the JWDA relating to development and construction of the K2 well
4 site, including hiring a well driller.

5 Unfortunately, however, by letter dated October 17, 2008 the District attempted to
6 terminate the JWDA. Even further, the District refused to perform its obligations under
7 the K2 Agreement, opposed construction of the K2 Well Project and refused to release the
8 \$300,000 from escrow for construction of the K2 test well. In response, PWCo disputed
9 the District's termination of the JWDA and demanded arbitration in accordance with ¶ 13
10 of the JWDA. After selection of arbitrators by the parties, the arbitration hearing was
11 scheduled for February 9-12, 2009.¹

12 On or about November 15, 2008, the District filed a Complaint in Condemnation
13 with the Gila County Superior Court, Case No. CV2008-375, seeking condemnation of
14 certain assets of PWCo, SWCo and Brooke Utilities, Inc. ("BUI"). PWCo has contested
15 the condemnation and the parties anticipate lengthy litigation.

16 Last month, PWCo and the District entered negotiations to suspend and/or resolve
17 the various proceedings between the parties pending resolution of the District's
18 condemnation complaint. Following those negotiations, PWCo and the District executed
19 a Joint Agreement dated January 23, 2009. Under the Joint Agreement, PWCo agreed to
20 dismiss its arbitration claims against the District, without prejudice, and the February
21 2009 arbitration hearing dates were vacated. Further, the District agreed and
22 acknowledged that PWCo has not waived any rights, claims, actions, defenses and/or
23

24 ¹ The purpose of the JWDA was a joint project between the District and PWCo to develop
25 additional water sources for use in providing water utility service to the residents of Pine
26 and Strawberry. Rather than cooperate in the development of the K2 Project, the current
management of the District refused to perform the agreement, which is hypocritical given
the District's criticisms of PWCo for failing to explore additional water sources.

1 damages pertaining to the JWDA.

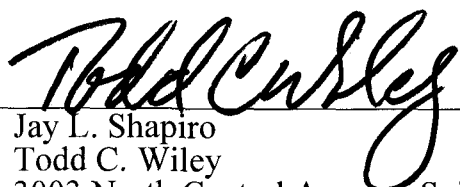
2 The purpose of the dismissal was to stay the arbitration proceedings, allow the
3 District to proceed with its condemnation proceedings and avoid unnecessary attorneys'
4 fees and legal costs relating to the arbitration proceedings. In short, PWCo and the
5 District have agreed that any and all claims concerning breach and/or violation of the
6 JWDA are temporarily suspended and held in abeyance pending resolution of the
7 condemnation proceedings. Under the Joint Agreement, PWCo expressly reserved the
8 right to refile its arbitration claims.

9 Finally, PWCo and the District met on February 5, 2009 to discuss the
10 condemnation action and potential settlement. The parties were unable to reach
11 agreement on acquisition of PWCo and SWCo. PWCo and SWCo have not received any
12 additional communications from the District relating to acquisition of the companies. As
13 a result, PWCo and SWCo anticipate lengthy and expensive litigation in the
14 condemnation action.

15 DATED this 23rd day of February, 2009.

16 FENNEMORE CRAIG, P.C.

17
18 By



Jay L. Shapiro
Todd C. Wiley
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 23rd day of February, 2009:

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

5 COPY of the foregoing hand-delivered
6 this 23rd day of February, 2009:

7 Chairman Kristin Mayes
8 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

9 Commissioner Paul Newman
10 Arizona Corporation Commission
1200 W. Washington Street
11 Phoenix, AZ 85007

12 Commissioner Gary Pierce
13 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

14 Commissioner Sandra D. Kennedy
15 Arizona Corporation Commission
1200 W. Washington Street
16 Phoenix, AZ 85007

17 Commissioner Bob Stump
18 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

19 Giancarlo G. Estrada
20 Aide to Chairman Kristin Mayes
Arizona Corporation Commission
1200 W. Washington Street
21 Phoenix, AZ 85007

22 Alan Stephens
23 Aide to Commissioner Paul Newman
Arizona Corporation Commission
1200 W. Washington Street
24 Phoenix, AZ 85007

John Le Sueur
Aide to Commissioner Gary Pierce
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Cristina Arzaga-Williams
Aide to Commissioner Sandra D.
Kennedy
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Meghaen Duger
Aide to Commissioner Bob Stump
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Mr. Dwight D. Nodes
Assistant Chief Administrative
Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Mr. Kevin Torrey, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COPY of the foregoing mailed and e-mailed this *2nd* day of February 2009 to:

jgliege@earthlink.net;
jgliege@gliege.com
John G. Gliege
Gliege Law Offices, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388

By: Mary L House

2155147.1/75206.015