

MAY - 5 2009

ANITA ESCOBEDO, Clerk

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8 Attorneys for Defendants
9 Pine Water Co., Inc.; Strawberry Water Co.,
10 Inc.; Brooke Utilities, Inc.

11 SUPERIOR COURT OF ARIZONA

12 GILA COUNTY

13 PINE STRAWBERRY WATER
14 IMPROVEMENT DISTRICT, a Tax
15 Levying Public Improvement District,

16 Plaintiff,

17 v.

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

Defendants.

No. CV2008-375

**ORDER FOR IMMEDIATE
POSSESSION**

AND

**ORDER CHANGING VENUE TO
YAVAPAI COUNTY SUPERIOR COURT
IN PRESCOTT, ARIZONA**

21 This matter having come before the Court on Pine Strawberry Water Improvement
22 District's ("PSWID") Application for Immediate Possession, and having read the
23 stipulation by the parties' regarding immediate possession and change of venue, the Court
24 finds:

25 1. That PSWID has sought to condemn a fee simple interest in and over the
26 subject property which is described in Exhibit 1 attached hereto.

1 2. That PSWID is in need of immediate possession of the subject property and
2 that the use for which the subject property is sought to be condemned is a necessary and
3 public use.

4 3. That the parties have stipulated to the amount of the bond to be posted by
5 PSWID for immediate possession of the subject property in the amount of THREE
6 MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,200,000.00).

7 NOW, THEREFORE, FOR GOOD CAUSE APPEARING, IT IS HEREBY
8 ORDERED, ADJUDGED AND DECREED as follows:

9 1. Pursuant to A.R.S. § 12-1116, PSWID shall be let into immediate
10 possession of said property described in Exhibit 1 attached hereto, upon posting its cash or
11 warrant for THREE MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS
12 (\$3,200,000.00) with the Clerk of the Superior Court (hereinafter "the Bond").

13 2. PSWID shall post the Bond and enter into immediate possession on or
14 before May 22, 2009.

15 3. That upon PSWID depositing the Bond with the Clerk of the Court,
16 defendants Pine Water Co., Inc.; Strawberry Water Co., Inc., and Brooke Utilities, Inc.
17 (collectively the "Utility Defendants"), shall be allowed to withdraw the Bond pursuant to
18 A.R.S. § 12-1116.

19 4. That upon entry of this Order relating to immediate possession, PSWID will
20 agree to dismiss any pending actions with the Arizona Corporation Commission relating
21 to Pine Water Co., Inc. or Strawberry Water Co., Inc in which PSWID is a party or
22 intervenor. Further, PSWID will reasonably cooperate in dismissal and resolution of any
23 and all other matters pending before the Corporation Commission involving Pine Water
24 Co., Inc. and/or Strawberry Water Co., Inc.

25 5. Two weeks before PSWID takes immediate possession, the Utility
26 Defendants will provide:

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- (a) lists of their customers with names and addresses;
- (b) maps of the systems;
- (c) meter read dates and accounts receivable information; and
- (d) up to a total of 20 hours of time from the Utility Defendants' employees in the first two weeks after PSWID takes immediate possession (at a cost of \$125 an hour to PSWID) to aid in transitioning the water systems at issue.

6. After taking immediate possession, PSWID will make the property described in Exhibit I and the subject water systems available to the Utility Defendants and their experts in this litigation to inspect the condition of the property and systems as it relates to valuation in this litigation. Such inspections shall be on reasonable terms and during working hours.

7. This Order in no way affects the rights of PSWID or the Defendants to pursue this lawsuit to trial for the purpose of obtaining a judgment as to the actual compensation due resulting from the taking of the subject property as determined by a Court or Jury.

8. This Order, the parties' stipulation, and any evidence introduced pursuant to this Order, shall not be introduced in evidence or used to the prejudice of any party in interest at the trial of this action. Nevertheless, nothing in this Order shall preclude the parties from introducing otherwise admissible evidence of the condition of the system discovered after entry of immediate possession.

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EXHIBIT 1

Legal Description of Identifiable Real Property Interests:

The Interest of PWC, SWC, or BUI in the following:

- Attachment 1 – Legal Description (K2 Site) from the Joint Well Development Agreement
- Documents from Pioneer Title attached to the Plaintiff's Complaint
- The real property of Pine Water Company (PWC), Strawberry Water Company (SWC), and Brooke Utilities, Inc., (BUI) located within Pine and Strawberry, Arizona; personal property of PWC, SWC, and BUI; water rights of PWC, SWC, and BUI; any rights to surface water from any source within Pine and Strawberry, Arizona; water wells and pumps of PWC, SWC, and BUI; franchises of PWC, and SWC; rights of PWC, SWC, and BUI under leases, water plants, substations and water distribution systems of PWC, SWC, and BUI; rights of PWC, SWC, and BUI under any other contracts; intangible rights of PWC, SWC, and BUI, and all other property of any nature, kind or genre of PWC and SWC used and useful in providing water utility services to the public within and without the area described in the Certificate(s) of Convenience and Necessity (CC&N(s)) of PWC and SWC issued by the Arizona Corporation Commission. The real property interests include, without limitation, fee simple title in any property owned by PWC, SWC, and BUI; PWC, SWC, and BUI's interest under easements, licenses or other agreements benefiting or used by PWC, SWC, and BUI; PWC, SWC, and BUI's interest under any leases or other occupancy agreements relating to real property. All rights to any and all property known as the Project Magnolia, the pipeline connecting the Pine and Strawberry Water Company water systems, including but not limited to easements, permits and licenses and other agreements for the location of physical facilities, the physical facilities themselves, including pumps, pipelines, valves, and all other appurtenant facilities. Said property constituting the complete used and useful water utility assets and property of the Pine Water Company and the Strawberry Water Company and Brooke Utilities, Inc. used and useful to provide domestic water service to each and every customer presently being served or capable of being served by Pine Water Company and Strawberry Water Company within their respective Certificates of Convenience and Necessity. Notwithstanding the foregoing, the property at issue does not include the Central Arizona Project contract held by PWC, the claims held by SWC in the matter of Strawberry Water Company v. Paulsen, any real property outside of Pine and Strawberry, Arizona, held by BUI, and any moveable personal property owned by BUI (including, as examples, but not limited to, tools, inventory, vehicles or other equipment, computers or other office equipment, and any other similar types of personal property). It is the specific intent of the parties that the property at issue in this immediate possession Order is essentially limited to the hard utility assets of PWC and SWC in the ground or otherwise affixed to real property in Pine and Strawberry, Arizona and the real property specifically described.

EXHIBIT "A"
LEGAL DESCRIPTION
K2 SITE

That portion of the Southeast Quarter of the Southwest Quarter of Section 22, Township 12 North, Range 8 East, of the Gila and Salt River Meridian, Gila County, Arizona, which lies immediately north of and adjacent to the northerly line of STRAWBERRY KNOLLS UNIT TWO, according to the plat of record in the office of the Gila County Recorder, Map No. 240, described as follows:

COMMENCING at the northwest corner of Lot 107, STRAWBERRY KNOLLS UNIT TWO;

- Thence: S 69° 18' 28" E, along the northerly line thereof, a distance of 79.78 feet;
- Thence: S 27° 39' 21" E, continuing along said northerly line of Lot 107, a distance of 69.16 feet;
- Thence: S 48° 27' 33" E, continuing along said northerly line of Lot 107, a distance of 82.95 feet to the southeast corner of said Lot 107, being coincident with a point on the existing northerly right-of-way line of Parkinson Drive;
- Thence: N 68° 56' 15" E, along said northerly right-of-way line, a distance of 39.81 feet;
- Thence: S 79° 58' 32" E, continuing along said northerly right-of-way line, a distance of 85.93 feet;
- Thence: N 81° 27' 23" E, continuing along said northerly right-of-way line, a distance of 56.23 feet;
- Thence: N 09° 21' 41" W, a distance of 47.43 feet to the TRUE POINT OF BEGINNING;
- Thence: N 80° 42' 42" E, a distance of 100.61 feet;
- Thence: N 09° 37' 10" W, a distance of 79.80 feet;
- Thence: S 79° 22' 32" W, a distance of 100.28 feet;
- Thence: S 09° 21' 41" E, a distance of 77.46 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress and water utilities over the following described real property:

BEGINNING at the southwest corner of Lot 2 of STRAWBERRY KNOLLS UNIT FOUR, AMENDED, as shown on Map 592, Gila County Records;

- Thence: N 09° 37' 01" W, along the west line of said Lot 2, a distance of 109.80 feet;
- Thence: N 79° 22' 32" E, a distance of 30.00 feet;

- Thence: S 09°37'01" E, a distance of 235.10 feet to a point on the northerly right-of-way line of Parkinson Drive;
- Thence: N 37°18'22" W, along the northerly right-of-way line of Parkinson Drive, a distance of 33.27 feet;
- Thence: N 73°24'09" W, continuing along the northerly right-of-way line of Parkinson Drive, a distance of 7.48 feet;
- Thence: N 09°37'01" W, a distance of 93.64 feet;
- Thence: S 68°58'19" W, a distance of 8.15 feet to the TRUE POINT OF BEGINNING.

Tetra Tech, Inc.
Project No. 1333.0015
July 13, 2007



