

ORIGINAL

OPEN MEETING AGENDA ITEM



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Attorney for PSWID, Fred B. Krafczyk, & Michael Greer

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AZ CORP COMMISSION
DOCKET CONTROL

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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 LETTER FROM PINE
STRAWBERRY WATER IMPROVEMENT
DISTRICT

Pine Strawberry Water Improvement District, Fred B. Krafczyk, and Michael Greer hereby file the attached letter dated October 17, 2008 from counsel for the Pine Strawberry Water Improvement District to Jay Shapiro, Bart Wilhoit, and Sarah Kubiak. This letter is hereby filed in this docket to further update the Commission regarding the above referenced matter pursuant to the Procedural Order in this docket dated September 29, 2008.

RESPECTFULLY SUBMITTED this 17th day of October, 2008.

GLIEGE LAW OFFICES, PLLC

John G. Gliege

Arizona Corporation Commission

DOCKETED

OCT 20 2008

DOCKETED BY

1 Original and thirteen copies of the foregoing
Mailed this 17th day of October, 2008 to:

2
3 Docket Control Center
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7
8 Copies of the foregoing
9 Mailed this 17th day of October, 2008 to:

10 Fennemore Craig, P.C.
11 Attn: Mr. Jay L. Shapiro
12 3003 North Central Ave. Ste 2600
13 Phoenix, AZ 85012-2913
14 Attorneys for Pine Water Company

15
16 Honorable Dwight D. Nodes
17 Assistant Chief Administrative Law Judge
18 Arizona Corporation Commission
19 1200 W. Washington Street
20 Phoenix, AZ 85007

21
22 Mr. Kevin Torrey, Esq.
23 Legal Division
24 Arizona Corporation Commission
25 1200 W. Washington Street
26 Phoenix, AZ 85007

27
28 RENSCH WALKER & HARPER, PC
29 Attn: Michael J. Harper
111 W. Cedar Lane, Ste C
Payson, AZ 85541
928-474-0322
Attorneys for Cindy Maack

Gliege Law Offices, PLLC

John G. Gliege

October 17, 2008

Jay Shapiro
Bart Wilhoit
Sarah A. Kubiak
Fennemore Craig
3003 North Central Ave. Ste 2600
Phoenix, AZ 85012-2913

Re: Response to letter from Robert Hardcastle to Pine Strawberry Water Improvement District dated October 10, 2008

Dear Ms Kubiak, Messrs Shapiro and Wilhoit:

The Board of Directors of the Pine Strawberry Water Improvement District {District} has asked that I respond to the letter received from Brooke Utilities, Inc. on October 10, 2008. First, please be advised that Pine Water Company 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 {the "JWDA"} 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 {the "Escrow"} and completion of the K2 Project under the Joint Well Development Agreement. The time for distribution of the funds out of the Escrow is clearly set forth in the Escrow and such funds cannot be released without strict adherence thereto.

I have examined the Notice of the Meeting which was sent to the Pine Strawberry Water Improvement District dated October 3, 2008 and note that it does not indicate that the purpose of the meeting which was being requested was to discuss the items noted in the letter of October 10, 2008. That letter clearly points out that the meeting was: ". . . for the purpose of communicating the general status of the K2 Project and related development schedule." Further the notice went on to request confirmation of availability and attendance.

My clients promptly responded on October 6, 2008 indicating that scheduling conflicts precluded a meeting that week, and Mr. Dickinson wrote that he would provide a schedule of available meeting times to Ms Brogdon. Correspondence from Ms Brogdon followed on October 7 demanding attendance at the meeting without specifying the purpose or agenda of the meeting. Again my clients responded that the designated representatives were not available at the scheduled time for the meeting. No one "refused" to attend a meeting. In fact my clients were in good faith attempting to establish a new meeting schedule, still without knowing the subject matter of the meeting.

The letter of October 10, 2008 is replete with both overt and subtle threats of lawsuits to resolve this matter. I would call your attention to Section 13 of the JWDA which clearly points out that the only means of resolving disputes arising under the JWDA is resort to binding arbitration. It

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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.

I. THE DISTRICT IS NOT LIABLE TO PINE WATER COMPANY IF THE AGREEMENT IS DECLARED INVALID

Mr. Hardcastle starts out his letter by setting forth his position that the district will be liable to Pine Water Company if the JWDA is found to be unconstitutional or illegal by a court of competent jurisdiction. Surely it is obvious that declaration of illegality by a court would be a defense to any claims for breach of warranty or misrepresentation. The allegations concerning the conduct of various individuals really are a false accusation and not relevant in the ultimate issue of deciding if the JWDA is legally binding on the District. If the JWDA is binding, then the District has certain obligations to undertake. If the JWDA is not legally valid, then the District has no further obligations under the JWDA and is entitled to the return of the money in the Escrow which was established pursuant to the JWDA.

II. TIME EXTENSION UNDER THE JWDA

This letter appears to be the first request for extensions of time beyond that set forth in the project schedule. The District has seen a few proposed modified project schedules and would appreciate it if Pine Water Company could provide the current schedule for completion of this work.

III. NOTICE OF INTENT TO PROCEED WITH WELL CONSTRUCTION

As a part of the process under the JWDA, Pine Water Company has agreed to comply with the public bidding statutes of the State of Arizona in the letting of the contract to construct the well. To date no evidence of such compliance has been presented to the District, even though on at least three occasions the chairman of the board of directors has requested such evidence of compliance. Any contract entered into by Pine Water Company which fails to fully comply with the public bidding statutes of the State of Arizona will not be considered to be in compliance with the JWDA.

Please be advised 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.

IV. NOTICE OF MATERIAL BREACH OF THE JWDA BY PINE WATER COMPANY

If the Contract were to be deemed valid, there are a number of material breaches by Pine Water Company, including, but not limited to:

1. Failure to provide information showing compliance with the laws of the State of Arizona pertaining to public contracts;
2. Failure to complete work on time;
3. The determination by Pine Strawberry Water Improvement District that the Project cannot be completed in two years beyond the execution of the Agreement;
4. Lack of demonstrated rights of way for Access to the K2 site;
5. No plan approvals from appropriate governmental entities for the well drilling;
6. No adequate budgets or revision of the budgets for the project have been submitted to the District;

7. The "test well" described in the agreement has been characterized by Mr. Hardcastle as the Production Well giving rise to the appearance of the anticipatory repudiation of the Contract in that Pine Water Company will not then drill the production well as required by the Contract;
8. Failure of Pine Water Company to provide notice of the availability of funding for that portion of the Project which is to be paid by Pine Water Company.

V. NOTICE OF DENUNCIATION OF THE JWDA

Based upon the forgoing breaches of the contract by Pine Water Company, and upon the following additional matters:

- The Conflicts of interest of Messrs Richie and Brenninger in their participation in and negotiation of the JWDA;
- The fact that prior Boards of Directors cannot bind the present board to the expenditure of public funds;
- The Constitutional questions of the validity of the agreement because of loan of funds to a public service corporation;
- The Issue of delegation of power to expend funds out of public treasury to a private entity;

the Pine Strawberry Water Improvement District hereby denounces the JWDA and takes the position that the agreement is null and void and of no force and effect and not binding upon the District.

VI. DEMAND FOR RETURN OF ESCROW FUNDS

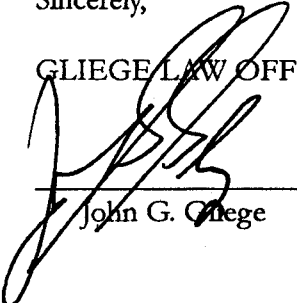
In light of the denunciation of the agreement, the Pine Strawberry Water Improvement District, pursuant to the terms and conditions of the Escrow hereby demands the return of the monies deposited in the Escrow fund and is concurrently herewith demanding the same from the Escrow Agent.

VII. CONCLUSION

Please note that the District is still interested in acquiring the Pine and Strawberry Water Systems. It would appear 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. The District would propose that this matter of the JWDA should be held in abeyance pending the resolution of the acquisition of the Water Systems.

Sincerely,

GLIEGE LAW OFFICES PLLC



John G. Gliege