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10 Pine Water Co., Inc.; Strawberry Water Co.,
11 Inc.; Brooke Utilities, Inc.

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SUPERIOR COURT OF ARIZONA
YAVAPAI COUNTY

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

Plaintiff,

v.

PINE WATER CO., INC., an Arizona
Corporation; STRAWBERRY WATER
CO., INC., an Arizona Corporation;
BROOKE UTILITIES, INC., an
Arizona Corporation; COUNTY OF
GILA, a political subdivision of the
State of Arizona; JOHN DOES 1
through 10; and BLACK AND WHITE
PARTNERSHIPS 1 through 10,

Defendants.

No. CV2009-0785

**FINAL JUDGMENT OF
CONDEMNATION**

(Assigned to the Honorable David L.
Mackey)

This matter came before the Court pursuant to the complaint in eminent domain to condemn the assets of Pine Water Company, Inc. ("PWCO") and Strawberry Water Company, Inc. ("SWCO"), filed by Pine Strawberry Water Improvement District, a tax levying improvement district ("PSWID").

1 After considering the complaint, noting the consent of the parties to entry of this
2 judgment ("Judgment"), and by reason of the disclaimers of interest filed by the County of
3 Gila and Gary Rogers, the Estate of Marion B. Rogers, Nancy Baumrucker and Candace
4 Berger, it appearing that there are no other persons having any right, title, claim or interest
5 in and to the property and/or assets that are the subject of this condemnation proceeding,
6 and good cause appearing, the Court hereby finds and concludes as follows:

7 NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that
8 judgment is hereby entered as follows:

9 1. That the County of Gila and Gary Rogers, the Estate of Marion B. Rogers,
10 Nancy Baumrucker and Candace Berger shall take nothing, having filed disclaimers of
11 interest.

12 2. That PSWID, PWCO, SWCO, and Brooke Utilities, Inc. ("BUI") shall
13 obtain and provide each other, prior to the entry of this Judgment with appropriate
14 corporate resolutions or a duly authorized resolution in the case of PSWID indicating
15 acceptance and approval of this Judgment. PWCO, SWCO and BUI shall obtain and
16 provide PSWID with appropriate evidence of the good standing of each corporation prior
17 to the entry of this Judgment.

18 3. That PSWID have judgment condemning for its sole use, possession and
19 ownership the following: all real property and any fixtures appurtenant thereto of PWCO,
20 SWCO, and BUI now located within the boundaries of the Certificates of Convenience
21 and Necessity ("CC&Ns") of PWCO and SWCO as shown on the map attached hereto as
22 Exhibit A, including all fee interests, leasehold interests, easements, licenses, permits,
23 franchises, U.S. Forest Service permits, Arizona Department of Transportation
24 encroachment permits, occupancy agreements or other agreements benefiting or used by
25 PWCO and SWCO, including any interests in real property described in Exhibit B
26 attached hereto; all transferable water rights of PWCO and SWCO; any rights to surface

1 water from any source within Pine and Strawberry, Arizona; all of the plants, substations
2 and water distribution systems and all easements, pumps, wells, waterlines, meters, water
3 storage tanks, electrical panels and services and other real property used or useful in the
4 provision of domestic water service to customers located within the CC&Ns of PWCO
5 and SWCO; all rights and duties of PWCO, BUI and SWCO under any contracts attached
6 in Exhibit C attached hereto; intangible rights of PWCO, BUI and SWCO and all other
7 real property or fixtures thereto of PWCO and SWCO used and useful in providing water
8 utility services to the public within and without the area described in the PWCO and
9 SWCO CC&Ns issued by the Arizona Corporation Commission as shown on the map
10 attached hereto as Exhibit A; all rights to any and all property known as the Project
11 Magnolia, the pipeline connecting the PWCO and SWCO water systems, including but
12 not limited to easements, permits and licenses and other agreements for the location of
13 physical facilities, the physical facilities themselves, including pumps, pipelines, valves,
14 and all other appurtenant facilities; and all other assets used and useful to provide
15 domestic water service to each and every customer presently being served or capable of
16 being served by PWCO and SWCO within their respective CC&Ns (collectively, the
17 "Used and Useful Assets") and any going concern value of the business ("Going Concern
18 Value") of PWCO and SWCO. Notwithstanding the foregoing, the Used and Useful
19 Assets do not include: (1) the Central Arizona Project ("CAP") allocation presently held
20 by PWCO which shall be transferred back to Central Arizona Water Conservation District
21 ("CAWCD") in accordance with its contract (with PWCO retaining all rights to its
22 Relinquishment Accounts established and maintained by the CAWCD for the PWCO and
23 PSWID agreeing to cooperate in good faith to assist PWCO in retaining such
24 Relinquishment Accounts); (2) any claims or judgments held by PWCO, SWCO or BUI
25 relating to or affecting PWCO's, SWCO's or BUI's relationship with any third parties,
26 including, but not limited to, those held by SWCO in the matter of Strawberry Water

1 Company v. Paulsen, Maricopa County Superior Court No. CV2001-005988; (3) any real
2 property outside of the CC&Ns of Pine Water Company and Strawberry Water Company
3 held by BUI; and (4) any moveable personal property owned by BUI (including, as
4 examples, but not limited to, tools, inventory, vehicles or other equipment, computers or
5 other office equipment, and any other similar types of personal property). It is the specific
6 intent of PSWID, PWCO, SWCO and BUI that the Used and Useful Assets are the utility
7 assets of PWCO, SWCO in the ground or located on real property in Pine and Strawberry,
8 Arizona, as such real property is specifically described herein, and all other property of
9 PWCO, SWCO specifically described herein within the boundaries of the CC&Ns of
10 PWCO or SWCO.

11 4. That upon entry of this Judgment, PWCO, SWCO and BUI:

12 (a) warrant that all Advance in Aid of Construction contracts between the
13 PWCO, SWCO or BUI and any third party for the provision of water service within the
14 area contained within the CC&Ns of PWCO, SWCO and BUI have been fully disclosed to
15 PSWID; that infrastructure constructed pursuant to those contracts has been fully funded
16 and put in service; and that PWCO, SWCO and BUI are current on all refund payments
17 due under any such contracts as of the date this Judgment is entered. PSWID assumes all
18 obligations under any such contracts for any and all refund obligations due after the date
19 this Judgment is entered;

20 (b) shall provide to PSWID a copy of each and every water sharing
21 agreement used by them to obtain water for the Pine and Strawberry water systems.
22 PWCO, SWCO and BUI agree that they shall use their best reasonable efforts to have
23 such agreements transferred or assigned to PSWID, copies of said agreements attached
24 hereto as Exhibit C;

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1 (c) shall provide the Arizona Department of Water Resources ("ADWR")
2 well identification numbers for wells owned and/or operated by PWCO, SWCO and BUI
3 and included in the Used and Useful Assets;

4 (d) shall provide the original copies of all historical and current maps
5 currently in their possession of the complete water system showing the size, dimension
6 and location of each and every water meter, water line, well, pressure pump, storage tank
7 or other items included in the Used and Useful Assets being conveyed hereunder;

8 (e) shall provide lists of all customers, their mailing addresses, billing
9 schedules for customers, information concerning which customers are on which rate
10 schedules, meter sizes, telephone numbers, to the extent they exist with PWCO and
11 SWCO and any other information regarding each customer of PWCO, SWCO and BUI
12 within the CC&Ns of PWCO and SWCO. Such information shall be provided in both
13 written and an electronic format for importation into Excel format;

14 (f) shall provide copies of the 2008 Consumer Confidence Reports
15 containing a summary of all water quality conditions in the water systems;

16 (g) warrant that there are no outstanding notices of violation from the
17 Arizona Department of Environmental Quality ("ADEQ") and that any and all consent
18 orders or settlement agreements with ADEQ have been disclosed and that there are no
19 unresolved compliance actions against PWCO or SWCO by ADEQ;

20 (h) shall take all steps necessary and required by ADWR to transfer and
21 assign all wells and any and all water rights being conveyed to PSWID;

22 (i) shall provide to PSWID any customer "waiting lists" for meters or water
23 service;

24 (j) shall provide total water consumed in gallons for each of PWCO's and
25 SWCO's identified customer classes by month for all months from January 2004 to the
26 present;

1 (k) shall provide total water purchased in gallons or pumped from PWCO's
2 and SWCO's wells by month for all months from January 2004 to the present;

3 (l) shall provide total water sales by month from PWCO to SWCO and
4 SWCO to PWCO for all months from January 2004 to the present;

5 (m) shall provide total water consumed in gallons for each of PWCO's and
6 SWCO's identified customer classes by month for the period January 2004 to the present
7 according to the water usage tier usage blocks utilized by the PWCO and SWCO;

8 (n) shall provide the number of water meters by meter size for each
9 identified customer class for PWCO and SWCO for the most recent month available;

10 (o) shall provide revenues by month for each identified customer class for
11 PWCO and SWCO for all months from January 2004 to the present, including separate
12 totals for revenues and for any sales taxes collected from PWCO and SWCO ratepayers;

13 (p) shall, at the time of actual transfer of the Used and Useful Assets make
14 reasonable efforts to provide the water in all storage facilities that is available at the time,
15 consistent with available water resources and reasonable operating practices, at no cost to
16 PSWID or its customers, so that PSWID may continue to operate the same for the benefit
17 of customers;

18 (q) shall provide the operations and maintenance manuals, to the extent that
19 they exist and are reasonably available, for all property being transferred or conveyed
20 hereby;

21 (r) shall provide all data pertaining to meter readings taken by PWCO or
22 SWCO;

23 (s) shall provide all electronic and printed data, maps, instructions or
24 information pertaining to the operation or maintenance of the water systems or the
25 customers of PWCO or SWCO or their immediate predecessor companies (including
26 E&R Water Co., Inc.; Williamson Waterworks, Inc.; and United Utilities, Inc.) providing

1 water service or any attributes thereof, under the auspices of the foregoing companies
2 within the boundaries of the CC&Ns of the foregoing companies;

3 (t) warrant that there are no outstanding notices of violation from ADWR
4 and that any and all consent orders or settlement agreements with ADWR have been
5 disclosed and that there are no unresolved compliance actions against PWCO or SWCO
6 by ADWR; and

7 (u) warrant that all taxes levied and collected pursuant to A.R.S. §§ 42-
8 5301 *et seq.* have been collected and paid in full to the State of Arizona.

9 5. That, within three business days after the date that both (1) this Judgment is
10 entered, and (2) PWCO, SWCO and BUI have provided the documents and information
11 listed in paragraph 4 above, PSWID shall pay to PWCO, SWCO and BUI (by wire
12 transfer to the account designated in writing by PWCO, SWCO and BUI) the total sum of
13 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) as and for just
14 compensation for the taking of the Used and Useful Assets and any Going Concern Value.

15 6. That said payment in paragraph 5 shall constitute full and final just
16 compensation to PWCO, SWCO and BUI for the condemnation of the Going Concern
17 Value and the Used and Useful Assets in their “as is”, “where is”, “with all faults”
18 condition, and no further payments of any kind by PSWID to PWCO, SWCO and BUI
19 shall be required, except as provided in paragraph 9 below. Each party shall bear its own
20 attorneys’ fees, costs and expenses in connection with this action. All risk of loss related
21 to the Used and Useful Assets passes from PWCO, SWCO and BUI to PSWID at the time
22 the payment in paragraph 5 is made to such entities. Until the time of payment, PWCO,
23 SWCO and BUI shall maintain adequate insurance coverage on such Used and Useful
24 Assets to provide replacement thereof in the event of any loss. Further, PWCO, SWCO
25 and BUI shall maintain liability insurance policies on the operation of such businesses
26 until such time as payment in paragraph 5 is made; said policies providing coverage for

1 any and all claims made against PWCO, SWCO and BUI arising out the operation of the
2 water systems or any other activities.

3 7. That PSWID will dismiss any pending actions with the Arizona Corporation
4 Commission relating to PWCO, SWCO, and/or BUI in which PSWID is a party and that
5 PSWID will reasonably cooperate in dismissal and resolution of any and all other matters
6 pending before the Arizona Corporation Commission involving PWCO, SWCO, and/or
7 BUI arising out of or pertaining to issues arising out of actions or inactions of PWCO,
8 SWCO, or BUI occurring within the areas of the CC&Ns of PWCO and SWCO. Further,
9 PSWID shall not be required to make any total expenditures in excess of \$8,000.00
10 performing such reasonable cooperation. PSWID shall not submit itself, nor shall this
11 Judgment constitute a submission of PSWID, to the jurisdiction of the Arizona
12 Corporation Commission.

13 8. That to the fullest extent permitted by law, PSWID shall release, defend,
14 indemnify and hold harmless PWCO, SWCO and BUI, and their respective partners,
15 members, directors, principals, officers, agents, employees, representatives, parents,
16 subsidiaries, and/or affiliates, from and against any and all liabilities, claims, damages,
17 losses, costs, expenses (including but not limited to, attorney's fees), injuries, causes of
18 action, or judgments relating to operation, management and/or ownership of the water
19 systems pertaining to events that occur after payment of the sums owed under paragraph 5
20 above. PSWID shall defend PWCO, SWCO and/or BUI, at PSWID's sole costs and
21 expense with legal counsel acceptable to PWCO, SWCO and/or BUI. This indemnity
22 clause extends to and includes all claims, just or unjust, based on a tort, strict liability,
23 contract, lien, statute, stop notice, rule, ordinance or other affiliated relief or liability, and
24 whether the injury complained of arises from any death, personal injury, sickness, disease,
25 property damage (including loss of use), economic loss, patent infringement, copyright
26 infringement, or otherwise. This indemnity clause shall apply solely to the extent any

1 such claim is caused by acts or omissions of PSWID, and shall not apply to the extent any
2 such claim is caused by the acts or omissions of PWCO, SWCO and/or BUI or any other
3 third party.

4 To the fullest extent permitted by law, PWCO, SWCO and BUI shall release,
5 defend, indemnify and hold harmless PSWID, and its officers, directors, employees,
6 and/or representatives, from and against any and all liabilities, claims, damages, losses,
7 costs, expenses (including but not limited to, attorney's fees), injuries, causes of action, or
8 judgments relating to operation, management and/or ownership of the water systems
9 pertaining to events that occurred prior to payment of the sums owed under paragraph 5
10 above. PWCO, SWCO and/or BUI shall defend PSWID at PWCO's, SWCO's and/or
11 BUI's sole cost and expense with legal counsel acceptable to PSWID. This indemnity
12 clause extends to and includes all claims, just or unjust, based on a tort, strict liability,
13 contract, lien, statute, stop notice, rule, ordinance or other affiliated relief or liability, and
14 whether the injury complained of arises from any death, personal injury, sickness, disease,
15 property damage (including loss of use), economic loss, patent infringement, copyright
16 infringement, or otherwise. This indemnity clause shall apply solely to the extent any
17 such claim is caused by acts or omissions of PWCO, SWCO and/or BUI, and shall not
18 apply to the extent any such claim is caused by the acts or omissions of PSWID or any
19 other third party.

20 The mutual releases and indemnity provisions noted above do not constitute in any
21 way a representation or warranty pertaining to title, rights of use, ownership, rights of
22 access and/or any similar issue and the indemnity provisions set forth above do not apply
23 to any claims, liabilities, damages, losses, costs, expenses, injuries, causes of action and/or
24 judgments relating in any way to such issues.

25 Any dispute relating to this Judgment shall be brought in Yavapai County Superior
26 Court.

1 9. That in addition to the payment of Three Million Five Hundred Thousand
2 Dollars (\$3,500,000.00) by PSWID as set forth in paragraph 5 above, PSWID agrees to
3 purchase all accounts receivable owned by PWCO and SWCO for a payment of One
4 Hundred Thousand Dollars (\$100,000.00). Said payment is due (by wire transfer to the
5 account designated in writing by PWCO, SWCO and BUI) at the same time as the Three
6 Million Five Hundred Thousand Dollars (\$3,500,000.00) payment by PSWID as set forth
7 in paragraph 5.

8 10. That PWCO and SWCO shall transfer all meter deposits and/or security
9 deposits (estimated as of June 30, 2009 to be approximately \$43,619.29) to PSWID. Said
10 payment is due (by wire transfer to the account designated in writing by PSWID) at the
11 same time as the Three Million Five Hundred Thousand Dollars (\$3,500,000.00) payment
12 by PSWID as set forth in paragraph 5.

13 11. That PWCO, SWCO and or BUI shall be responsible for any and all
14 amounts accruing under any water sharing agreements through and including the date that
15 PSWID makes the payment set forth in paragraph 5. Any accounts, monies or other debts
16 incurred under any water sharing agreements after the date of the payment set forth in
17 paragraph 5 shall be the sole responsibility of PSWID.

18 12. That the parties agree to perform any reasonable tasks necessary imposed by
19 Compass Bank as a condition of financing the loan to PSWID being used to provide funds
20 for this condemnation. The parties also agree to cooperate in drafting and signing any
21 additional documents necessary to effectuate the transfer pursuant to the Final Order of
22 Condemnation, as hereinafter defined, and this Judgment.

23 13. That upon payment by PSWID of the sum specified in paragraph 5, PWCO,
24 SWCO and BUI shall immediately execute a satisfaction of judgment (the "Satisfaction of
25 Judgment") containing a waiver of the right to appeal, said Satisfaction of Judgment in the
26 form attached as Exhibit D. The same Satisfaction of Judgment shall be executed by

1 PSWID, indicating that PWCO, SWCO and BUI have satisfied all requirements set forth
2 herein. Said Satisfaction of Judgment shall be promptly filed with this Court, constituting
3 an acknowledgement that all requisite actions required pursuant to this Judgment have
4 been completed.

5 14. That upon the filing of the Satisfaction of Judgment, the Court shall,
6 pursuant to Arizona Revised Statutes § 12-1126, enter the final order of condemnation
7 ("Final Order of Condemnation"), in the form attached hereto as Exhibit D, vesting in
8 PSWID, sole use, possession and ownership to all of the Used and Useful Assets as
9 described in paragraph 3, free and clear of any and all claims by, through or on behalf of
10 PWCO, SWCO and BUI and without the necessity of any other consents, orders or
11 approvals by any governmental entities. The conveyance of all real and personal property
12 shall be by virtue of the Final Order of Condemnation, said order bearing no warranties or
13 guarantees.

14 15. That this Judgment and the Final Order of Condemnation constitutes a final
15 and conclusive determination as to all issues raised in this litigation and shall constitute
16 the final judgment in this proceeding in all respects. All parties hereto, by approving this
17 form of Judgment agree to waive any right of appeal of this Judgment which may exist
18 following the entry thereof.

19 DONE IN OPEN COURT this ___ day of _____, 2009.

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David L. Mackey
Judge of the Superior Court

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