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Attorney for Interveners

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

PINE STRAWBERRY WATER)
IMPROVEMENT DISTRICT, a Tax)
Levying Public Improvement District)
pursuant to A.R.S. §§ 48-901 to 48-966)
inclusive, and §§ 48-1011 to 48-1019)
inclusive and all amendments and)
supplements thereto,)

Plaintiff,)

v.)

PINE WATER CO., INC., an Arizona)
Corporation; STRAWBERRY WATER)
CO., 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.)

CASE NO. CV-20080375

ANSWER TO CONDEMNATION
COMPLAINT

AK
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Intervener, Gary Rogers, by and through undersigned counsel, hereby answers Plaintiff's Complaint by admitting, denying and alleging as follows:

Mr. Rogers admits, for purposes of this Complaint only, the allegations contained in paragraphs II, III, IV, VI, XI and XII of the Complaint.

1 Mr. Rogers denies the allegations contained in paragraphs V and XIII of the complaint.

2 Mr. Rogers is without sufficient information to admit or deny the allegations contained
3 in paragraphs VII, IX, X and XIV of the Complaint.

4 Regarding paragraph I of the Complaint, Mr. Rogers admits that plaintiff is a municipal
5 corporation of the State of Arizona and is vested by law with the authority to condemn the
6 assets of a water utility company or undertaking. Mr. Rogers is without sufficient information
7 to admit or deny whether plaintiff's corporate limits are located entirely within the County of
8 Gila, State of Arizona.

9 Regarding paragraph VIII of the Complaint, Mr. Rogers admits that plaintiff has the
10 authority to bring a condemnation action pursuant to Titles Twelve and Forty-Eight of the
11 Arizona Revised Statutes but denies that this action has been brought pursuant to those statutes
12 and that plaintiff has the right to maintain this action pursuant to those statutes.

13 **Affirmative Defenses**

14 Based on the knowledge available to him to date, Mr. Rogers asserts, as affirmative
15 defenses to this action:

- 16 1. Plaintiff's claims fail because plaintiff has not made an offer to purchase Mr.
17 Rogers property in violation of A.R.S. § 12-1116(A).
- 18 2. The Complaint fails to state a claim against Mr. Rogers upon which relief can be
19 granted.
- 20 3. Plaintiff's right to recovery is barred by its own improper conduct or "unclean
21 hands."
- 22 4. This action is barred because plaintiff failed to join all necessary parties;
- 23 5. Plaintiff is estopped from asserting a claim against Mr. Rogers;
- 24 6. Plaintiff's claims against Mr. Rogers are barred by the due process clause of the
25 Fifth Amendment of the U.S. Constitution and the due process clause in Article
26 2, Section 4 of the Arizona Constitution;
- 27
- 28

1 7. Plaintiff has waived its claims against Mr. Rogers and

2 8. Plaintiff's claims against Mr. Rogers are barred by the doctrine of laches.

3 **Prayer for Relief**

4 Intervener Mr. Rogers asks this Court for judgment as follows:

5 A. That plaintiff not take Mr. Rogers' property by its Complaint.

6
7 B. That Mr. Rogers be awarded his costs and attorneys fees with respect to this
8 action; and

9
10 C. For other relief as this Court determines to be just and equitable.

11
12 DATED this 12th day of May, 2009.

13 **BROWN & BROWN LAW OFFICES, P.C.**

14
15 By 

16 Douglas E. Brown

17 David A. Brown

18 Bradley J. Palmer

19 Attorneys for Interveners

20 Original of the foregoing
21 filed with the Court this
22 12th day of May,
23 2009 to:

24 Gila County Superior Court

25 Copy of the foregoing
26 mailed and sent by electronic mail this
27 12th day of May,
28 2009 to:

John Gliege
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