

FORMAL COMPLAINT



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Phoenix, Arizona 85012-2913
4 Telephone: (602) 916-5000
Attorneys for Complainant
5 Pine Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

9 PINE WATER COMPANY, an Arizona
corporation,

Complainant,

v.

12 STRAWBERRY HOLLOW
13 DEVELOPMENT, INC., an Arizona
corporation, STRAWBERRY HOLLOW
14 PROPERTIES, L.L.C., an Arizona limited
liability company, STRAWBERRY
15 HOLLOW PROPERTY OWNER'S
ASSOCIATION, INC., an Arizona not-for-
16 profit corporation,

Respondents.

Docket No.
COMPLAINT

19 Complainant, Pine Water Company (hereafter "Pine Water"), for its complaint, states and
20 alleges as follows:

21 **I. NATURE OF THE ACTION.**

22 1. Pine Water brings this action pursuant to A.R.S. §§ 40-246 and 249. Pine Water
23 seeks to have Respondents, Strawberry Hollow Development, Inc. ("Strawberry Hollow
24 Development"), Strawberry Hollow Properties, LLC ("Strawberry Hollow Properties"), and
25 Strawberry Hollow Property Owners' Association, Inc. ("Strawberry Hollow Association"),
26

1 declared a public service corporation as that term is defined in the Arizona Constitution.¹ Ariz.
2 Const., Art. 15, § 2. Pine Water also seeks appropriate relief under A.R.S. § 40-422.

3 **II. THE PARTIES.**

4 2. Pine Water is an Arizona corporation engaged in the business of providing
5 domestic water utility service to customers in the areas of Pine and Strawberry, Gila County,
6 Arizona.

7 3. Respondent Strawberry Hollow Development is an Arizona corporation organized
8 to acquire, plan, develop, improve, market and sell residential real property within the State of
9 Arizona. Strawberry Hollow Development was incorporated for these purposes on December 28,
10 1999.

11 4. Respondent Strawberry Hollow Properties is an Arizona limited liability company
12 organized to acquire and sell unimproved real property in Arizona. Strawberry Hollow Properties
13 was organized on December 28, 1999 for this purpose.

14 5. Respondent Strawberry Hollow Association is an Arizona not-for-profit
15 corporation organized for the purposes of conducting activities set forth in that certain
16 Declaration of Covenants, Conditions and Restrictions, Strawberry Hollow, enacted March 20,
17 2001 ("CC&R"), as recorded in the Gila County Recorders' Office. Respondent Strawberry
18 Hollow Association also conducts all general business of a typical homeowners' association.
19 Association intends to assume ownership of the well system described herein. Strawberry
20 Hollow Association will ultimately be responsible for the operation, maintenance, repair, and
21 replacement of the system, as well as the provision of water service to its members.

22 **III. BACKGROUND.**

23 6. The territory now served by Pine Water has historically experienced water
24

25 ¹ Pine Water is uncertain which entity currently owns and/or is charged with responsibility for the water facilities
26 described herein. Pine Water believes all three entities are acting in concert to evade the Commission's jurisdiction
and deprive Pine Water of its rights. Unless otherwise specified, the term "Respondents" refers to all three entities
collectively.

1 shortages. See Commission Decision No. 59753, Finding of Fact 10.

2 7. In the late 1980s, the Commission ordered various moratoria on new connections
3 and/or main extensions in the area previously served by E&R Water Company, Pine Water's
4 predecessor. See Commission Decision Nos. 56539, 56654.

5 8. In July, 1996, the Commission limited E&R Water Company to connecting "one
6 single family residential connection per month on a first come first served basis." See
7 Commission Decision No. 59753 at 12. That decision continued the complete moratorium on
8 new main extensions, which moratorium remains in place today.

9 9. Strawberry Hollow Development is the owner and developer of certain real
10 property known and designated as Strawberry Hollow, located in Gila County, Arizona
11 ("Property"). The Property is located in the area that has been subject to water shortages.

12 10. Respondents have approached Pine Water for service, but have been denied
13 service based on this Commission's moratoria.

14 11. Pine Water is willing and able to serve the Property in the event the moratoria are
15 lifted.

16 12. On information and belief, Respondents have long sought domestic water service
17 from an alternative provider not subject to this Commission's moratorium.

18 13. Respondents attempted to negotiate with representatives of the Pine Strawberry
19 Domestic Water Improvement District to obtain domestic water service for the Property, but the
20 attempt was unsuccessful.

21 **IV. RESPONDENTS ARE ACTING AS A PUBLIC SERVICE CORPORATION.**

22 14. Having no other willing provider, Strawberry Hollow Development now intends to
23 act as "water provider" to 41 residential lots on 38 acres at the Property utilizing groundwater
24 distributed through a central distribution system to serve its customers. See Water Supply
25 Distribution System Design Report, July, 2000, Appendix "A," copy attached at Tab A;
26 Application for a Water Adequacy Report No. 22-400383, filed with the Arizona Department of

1 Water Resources on August 18, 2000, copy attached at Tab B.

2 15. On information and belief, the area of the Property Respondents now intend to
3 serve is only "Phase I" of a multi-phase project involving as many as 80 residential lots.

4 16. On September 12, 2000, the Arizona Department of Water Resources informed the
5 Arizona Department of Real Estate that "[b]ecause a 100-year adequate water supply has not been
6 demonstrated, the Department of Water Resources must find the water supply to be *inadequate*."
7 (Emphasis in original.) Letter from Greg Wallace, Chief Hydrologist, Arizona Department of
8 Water Resources to Roy Tanney, Department of Real Estate, copy attached at Tab C.

9 17. The Department of Real Estate's Subdivision Public Report for Strawberry Hollow
10 Phase I, issued April 10, 2001 ("Public Report"), indicates in a section labeled "UTILITIES,
11 Water" that water service will be provided through "[s]hared well agreements, with [Strawberry
12 Hollow Development] being responsible for completion of the facilities to the lot lines." Public
13 Report at 4, copy attached at Tab D. Further, "[m]aintenance of the water lines within the
14 subdivision (other than from lot line to dwelling) will be the responsibility of the Property
15 Owners' Association." Id.

16 18. Article 12 of the CC&Rs entitled "Shared Water System/Co-Tenancy" provides
17 for the co-ownership and maintenance of a "water system."² CC&Rs Art. 12, copy attached at
18 Tab E. The goal of the water distribution system is to provide future residents of Strawberry
19 Hollow with adequate water for normal domestic use and emergency fire protection. Id., CC&Rs
20 Exhibit "B."

21 19. Article 12 further provides that each owner shall pay an equal share of all costs
22 related to the well system, including operation, maintenance, repair, replacement and upgrading
23 costs. Moreover, each lot owner shall, by reason of ownership of a lot, own a percentage share

24 ² The term water system is defined in Exhibit B to the CC&Rs, attached at Tab E. Exhibit B provides "the water
25 system to serve Strawberry Hollow will consist of a new well, registration No. 55-579973, a 140,000 gallon storage
26 tank, 1,000 gallon hydropneumatic tank, and booster pumping system. The proposed system will be operated and
maintained by a property owners' association and consists primarily of PVC piping 8-inches, 6-inches, 4-inches and
2-inches in diameter."

1 interest of the well system. CC&Rs Art. 12.

2 20. Article 12 allows the Strawberry Hollow Association to adopt rules, akin to a
3 tariff, for use of the well system which "shall not unfairly or unreasonably discriminate against
4 any lots or owners." Id.

5 21. A list of rules has been promulgated pursuant to Article 12. The rules are set forth
6 in Exhibit "B" of the Public Report. These rules specify the terms on which water service and
7 maintenance will be made. Public Report Exhibit "B," at Tab D.

8 22. The rules specify that individuals seeking service may connect to the common
9 water line and may begin receiving water after inspection by the Association. Public Report,
10 Exhibit B.

11 23. The rules provide that individual water metering systems will be required for each
12 lot. Id.

13 24. The rules provide with respect to "fees and charges" (1) that each member must
14 pay a deposit at the time of connecting to the water system, (2) that late fees may be collected,
15 and interest may be charged on late payments, that disconnection and reconnection fees may
16 apply, and (3) that the Association may establish reasonable reserves for repair and replacement
17 of the system. Id.

18 **V. RESPONDENTS ARE VIOLATING RIGHTS GRANTED TO PINE WATER.**

19 25. E&R Water Company originally received a certificate of convenience and
20 necessity ("CC&N") by decision of the Commission No. 30820 in 1959.

21 26. Williamson Waterworks, Inc., received a CC&N by decision of the Commission
22 No. 41302 in 1971.

23 27. In June, 1998, this Commission approved a transfer of assets and CC&Ns from
24 E&R Water Company and Williamson Waterworks, Inc., to Pine Water. See Decision No. 60972.

25 28. As the holder of its CC&N for domestic water utility service, Pine Water is both
26 obligated and entitled to provide domestic water utility service in the areas of Pine and

1 Strawberry, Arizona. See, e.g., James P. Paul Water Co. v. Arizona Corporation Commission,
2 137 Ariz. 426, 429 (1983); A.R.S. §§ 40-281 through 284.

3 29. The Property to which Respondents now intend to provide water service is located
4 within the area encompassed by Pine Water's CC&N.

5 **VI. RELIEF SOUGHT.**

6 30. Pine Water seeks to have Respondents declared a public service corporation as that
7 term is defined in the Arizona Constitution. Ariz. Const., Art. 15, § 2. To this end, Pine Water
8 has, concurrently herewith, filed an Application for Order to Show Cause why Respondents
9 should not be adjudicated a public service corporation.

10 31. Pine Water further seeks a declaration pursuant to A.R.S. 40-422 that the
11 Respondents are operating as a public service corporation without having first obtained a CC&N
12 as required by A.R.S. 40-281(A).

13 32. Finally, Pine Water respectfully requests that the Commission immediately initiate
14 proceedings pursuant to A.R.S. § 40-422(A) to enjoin Respondents' from proceeding with
15 construction of water distribution facilities and/or water service to entities within the certificated
16 area covered by Pine Water's CC&N.

17 33. Pine Water also seeks such other relief as the Commission deems necessary and
18 appropriate under the circumstances.

19

20 DATED this 6th day of June, 2001.

21

22

23

24

25

26

FENNEMORE CRAIG

By 

Jay L. Shapiro
Thomas R. Wilmoth
Attorneys for Complainant
Pine Water Company

1 Original and 10 copies
hand-delivered this 14th
2 day of June, 2001 to:

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

5 Copy of the foregoing
6 hand-delivered this 16th
day of June, 2001 to:

7 James Benham, Esq.
8 Moore & Benham PLC
1144 E. Jefferson
9 Phoenix, AZ 85034-2285
Attorney and Statutory Agent for Respondents
10 Strawberry Hollow Development and
Strawberry Hollow Properties, L.L.C.

11 Lyn Farmer
12 Chief Administrative Law Judge
Hearing Division
13 Arizona Corporation Commission
1200 W. Washington St.
14 Phoenix, AZ 85007

15 Deb Scott, Director
Steve Olea, Assistant Director
16 Utilities Division
Arizona Corporation Commission
17 1200 W. Washington St.
Phoenix, AZ 85007

18 Chris Kempley, Chief Counsel
19 Legal Division
Arizona Corporation Commission
20 1200 W. Washington St.
Phoenix, AZ 85007

21 And a copy mailed to:

22 Mr. Loren Peterson
23 201 N. Trailwood Rd.
Payson, AZ 85541
24 Statutory Agent for Strawberry
Hollow Property Owner's Association, Inc.

25
26 By Mary House

A

**WATER SUPPLY AND DISTRIBUTION SYSTEM
DESIGN REPORT**

for

STRAWBERRY HOLLOW

Pine, Arizona

Prepared for:

Strawberry Hollow Development, Inc.
P.O. Box 2141
Pine, AZ 85544
(520) 476-2199



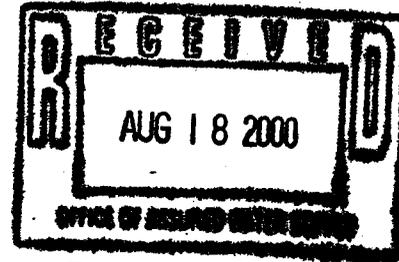
ASL Consulting Engineers
431 South Beeline Highway
Payson, Arizona 85541
(520) 474-4636

Project No. 2577.0001

July, 2000

B

ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF WATER MANAGEMENT
PARK PLACE
500 NORTH THIRD STREET
PHOENIX, ARIZONA 85004
(602) 417-2460



APPLICATION FOR A WATER ADEQUACY REPORT 22-400383
(Refer to application guidelines for assistance in completing this form)

PART A - GENERAL INFORMATION

- Name of subdivision: Strawberry Hollow, Phase I
- Location: 12N Township 8E Range SE 1/4 of 26 Section(s) Gila County
- Owner Name: Strawberry Hollow Development, Inc. Phone: (520) 476-2199
Address: P.O. Box 2141, Pine, AZ 85544
- Water Provider: Strawberry Hollow Development, Inc. Phone: (520) 476-2199
Address: P.O. Box 2141, Pine, AZ 85544
- Consultant Name: ASL Consulting Engineers Phone: (520) 474-4636
Address: 431 S. Beeline Highway, Payson, AZ 85541
- Primary Contact: Ralph O. Bossert, PE - ASL Consulting Engineers Phone: (520) 474-4636
Address: 431 S. Beeline Highway, Payson, AZ 85541

PART B - WATER DEMAND INFORMATION

- Include a map of the proposed subdivision plat, and reference as an attachment: "A" - Final Plat
Will a copy of this version of the map be submitted to the appropriate platting agency? Yes No
If no, explain: N/A
- Number of lots: 41 Size of lots: 17,590 sq ft. Total Acreage: 38
- Total demand projected for subdivision: 11.47 acre-feet (AF) per year
Projected water demand per residential lot: 250 gallons per day
Non-Residential demands: Golf course: -0- AF/year Parks: -0- AF/year Lakes: -0- AF/year
Other (specify): N/A -0- AF/year
- Expected year of completion (build-out): 2004

PART C- WATER SUPPLY INFORMATION

1. Please indicate source(s) of water to be used: X Groundwater ___ Surface Water ___ Effluent
(If the sources includes non-groundwater supplies, please complete "Supplement C.")
2. Provide a hydrologic study, and reference the attachment: "B" - Water Supply and Distribution System Design Report
3. a. Method of water distribution: X central distribution system ___ dry lot subdivision (individual wells)
 - b. If water is to be obtained from a water provider, include a "Notice of Intent to Serve" agreement and reference the attachment: N/A
4. If any wells proposed to serve the development are within one mile of a Water Quality Assurance Revolving Fund or Superfund site, or if the proposed water supply fails to meet safe drinking water quality standards, provide a study identifying and describing this water and reference the attachment: N/A
5. If a "Letter of Water Availability" or "Analysis of Adequate Water supply" has previously been issued for this provide a copy of the document and reference the attachment: N/A

PART D - FEES

Please calculate fees by completing the appropriate items below, and include the total fees with your application. Payment may be made by cash, check, or by entry in an existing fee credit account. Checks should be made payable to the Department of Water Resources. Failure to enclose the required fees will cause the application to be returned.

1.	Basic Application fee (includes first 20 lots)		<u>\$200.00</u>
2.	Per-lot review fee (for lots in excess of the first 20):		
	Total lots in this application	<u>41</u>	
	Less first 20 lots	<u>-20</u>	
	Lots subject to additional review fees	<u>21</u> x .50 per lot:	<u>\$ 10.50</u>
3.	Subtotal (add items #1 and #2 - maximum of \$800.00)		<u>\$ 210.50</u>
4.	Credit for prior determination of physical availability	.20 x Subtotal (#3)	<u>\$ -0-</u>
5.	TOTAL FEE DUE (subtract #4 from #3)		<u>\$ 210.50</u>

I DO HEREBY certify that the information contained in this application and all information accompanying it is true and correct to the best of my knowledge and belief.

Strawberry Hollow Development, Inc.
Owner Name (Please type or print)


Signature

8-14-00
Date

C

file

ARIZONA DEPARTMENT OF WATER RESOURCES
HYDROLOGY DIVISION

500 North Third Street, Phoenix, Arizona 85004
Telephone 602-417-2448
Fax 602-417-2425



JANE DEE HULL
Governor

RITA PEARSON
MAGUIRE
Director

September 12, 2000

Mr. Roy Tanney
Department of Real Estate
2910 North 44th Street
Phoenix, Arizona 85018

Re: **Water Adequacy Report #22-400383**
Strawberry Hollow, Gila County

Pursuant to A.R.S. §45-108, Mr. Ralph Bossert, ASL Consulting Engineers, has provided the Department of Water Resources with information on the water supply for the proposed subdivision, Strawberry Hollow, Phase I, occupying a portion of Section 26, T12N, R8E, G&S R B&M.

Water for domestic use will be provided to each of the 41 lots in the subdivision by the Strawberry Hollow Development Inc.. Adequacy of the water supply was reviewed by the Department with regard to quantity, quality, and dependability.

Because a 100 year water supply could not be demonstrated as being available to each lot based on the Department's physical availability criteria, the Department of Water Resources must find the water supply to be *inadequate* for the proposed use.

A.R.S. §32-2181.F. requires a summary of the Department's report for a dry lot subdivisions or those with an inadequate water supply be included in all promotional material and contracts for sales of lots in the subdivision. We suggest the following synopsis:

"Strawberry Hollow Phase I, is being sold with the domestic water supply to be provided by the Strawberry Hollow Development, Inc. water distribution system as a homeowner's association or improvement district which has yet to be established. Groundwater is being produced from the Redwall limestone. The limited availability of data associated with this formation as an aquifer does not allow for determination of the amount of the groundwater in storage, nor the dependability of supply. Additionally, this general area has been determined to be drought-sensitive. The depth to groundwater may range from 21 to over 1200 feet below land surface depending on topography. Groundwater quality is unknown. Because a 100-year adequate water supply has not been demonstrated, the Department of Water Resources must find the water supply to be *inadequate*."

Page 2

Mr. Roy Tanney

Water Adequacy Report #22-400383

Strawberry Hollow, Gila County

September 12, 2000

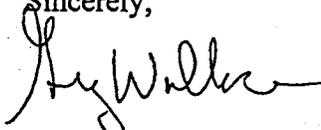
The developer, pursuant to A.R.S. §32-2181.F., may suggest a different summary of this report, but it must contain the above elements and/or the Department's findings. Any change to the above subdivision or water supply plans may invalidate this decision.

This letter constitutes the Department of Water Resources' report on the subdivision's water supply and is being forwarded to your office as required by A.R.S. §45-108. This law requires the developer to hold recordation of the above subdivision's plats until receipt of the Department's report on the subdivision's water supply. By copy of the report, the Gila County Recorder is being officially notified of the developer's compliance with the law.

This is an appealable agency action. The applicant is entitled to appeal this action. Rights to appeal are described in the Notice of Right of Appeal.

If you have any questions regarding this report, please call Andy Kurtz at 602-417-2448.

Sincerely,



Greg Wallace
Chief Hydrologist

GW/AK/ef
2059

cc: Ralph Bossert, ASL Consulting Engineers
Strawberry Hollow Development, Inc.
Linda H. Ortega, Gila County Recorder
Robert J. Mawson, Gila Planning & Zoning
Steve Rossi, Office of Assured & Adequate Water Supply

D

**STATE OF ARIZONA
DEPARTMENT OF REAL ESTATE
SUBDIVISION PUBLIC REPORT**

**FOR
STRAWBERRY HOLLOW PHASE 1**

Registration No. DM 01-027239

SUBDIVIDER

Strawberry Hollow Development, Inc.
P.O. Box 2141
Pine, AZ 85544

April 10, 2001

Effective Date

PROPERTY REPORT DISCLAIMER

This report is NOT A RECOMMENDATION NOR AN ENDORSEMENT by the State of Arizona of this land but is provided for informational purposes ONLY. The report reflects information provided by the subdivider and obtained by the Department in its review process in accordance with the provisions of Title 32, Chapter 20, Article 4, of the Arizona Revised Statutes, as amended. NOTE that not all of the information in this report has been verified by the Department; certain information has been accepted by the Department as true and accurate based on attestation of the subdivider and/or the subdivider's agents. You should verify all facts before signing any documents. The Department has not passed upon the quality or quantity of any improvement or structure and does not assume responsibility in either event.

PHOENIX OFFICE:
2910 N. 44th Street
First Floor
Phoenix, Arizona 85018
(602) 468-1414 ext. 400

TUCSON OFFICE:
400 West Congress
Suite 523
Tucson, Arizona 85701
(520) 628-6940

THE ARIZONA DEPARTMENT OF REAL ESTATE

REQUIRES THAT:

1. You BE GIVEN this public report;
2. YOU SIGN A RECEIPT indicating that you received this report;

RECOMMENDS:

1. You DO NOT SIGN ANY AGREEMENT before you have read this report;
2. You see the EXACT PROPERTY you are interested in BEFORE SIGNING any document for lease or purchase.

ARIZONA LAW STATES:

1. THE SALE OR LEASE OF SUBDIVIDED LANDS PRIOR TO ISSUANCE OF THIS REPORT OR FAILURE TO DELIVER THIS REPORT TO YOU SHALL RENDER THE SALE OR LEASE RESCINDABLE BY YOU. ACTION TO RESCIND MUST BE BROUGHT WITHIN 3 YEARS FROM DATE OF EXECUTION OF PURCHASE AGREEMENT.
2. CONTRACTS OR AGREEMENTS FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)* MAY BE RESCINDED BY YOU WITHOUT CAUSE BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE SIGNING.
3. IF YOU HAVE SIGNED A PURCHASE AGREEMENT FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)* PRIOR TO INSPECTING THE LOT, YOU HAVE SIX MONTHS TO INSPECT AND UPON INSPECTION MAY RESCIND THE PURCHASE AGREEMENT.

* A contract or agreement for purchase of a lot which includes a building or obligates the seller to complete construction of a building within two years from the contract date does not constitute the purchase of an unimproved lot. Therefore, if your purchase includes a lot and a building or a building to be built, you are not entitled to the rescission rights described in paragraphs 2 and 3.

REGISTRATION NO. DM01-027239

STRAWBERRY HOLLOW PHASE I

GENERAL

This report includes: Lots 1 through 41 and Tracts A through J of Strawberry Hollow Phase 1.

The map of this subdivision: is recorded in Map No. 732A & B, records of Gila County, State of Arizona.

The subdivision is approximately 37.76 acres in size. It has been divided into 41 lots and Tracts A through J. Lot boundaries will be staked with rebar.

YOU ARE ADVISED TO OBTAIN A COPY OF THE RECORDED MAP AND CORRECTION DOCUMENTS, IF ANY, AND NOTE ALL EASEMENTS, RESTRICTIONS AND STATEMENTS CONTAINED THEREIN.

SUBDIVISION LOCATION

Location: Pine Hollow Trail, Pine, Gila County, Arizona.

SUBDIVISION CHARACTERISTICS

Topography: Gently sloping, with rocky washes

Flooding and Drainage: Tetra Tech, Inc., in its letter dated April 4, 2001, states in part: "The topography is such that the site accepts off-site runoff from the north and west, which traverses the property via sheet flow, combines with Strawberry Hollow Wash running from north to south across the property and exits the property in the southeast corner. This wash is within the limits of the 100-year floodplain for which a public drainage easement is being dedicated. Minimum finished floor elevations for lots 2, 5 through 18 and 41 shall be one foot (1 ft) above the water surface elevation as shown on the plat. These lots are partially in the 100-year floodplain."

Adjacent Lands and Vicinity: Tonto National Forest to the west; R-1-12 and R-1-43, which is residential 12,000 square feet and 1 acre respectively, surround the other areas of the subdivision.

AIRPORTS

Airport: Payson Airport -- 15 miles

REGISTRATION NO. DM01-027239

STRAWBERRY HOLLOW PHASE I

UTILITIES

Electricity: Arizona Public Service (520-474-7645) with present facilities adjacent to subdivision. Developer is responsible for completion of facilities to lot lines with an estimated completion date of September 30, 2001. Estimated costs lot purchaser will have to pay for completion of facilities from lot line to dwelling are approximately \$5 per foot for trenching and line installation. There will also be a \$25 establishment fee.

Telephone: Qwest (520-776-2559) with present facilities adjacent to subdivision. Developer is responsible for completion of facilities to lot lines with an estimated completion date of September 30, 2001. There will be no additional costs for lot purchaser for completion of facilities to his lot line, but there will be a \$5 per foot charge for trenching and line installation from the lot line to the dwelling. There will be a \$25 hook-up fee and a possible deposit of 2 ½ times the estimated monthly bill depending on credit history.

IT IS POSSIBLE THAT YOU MAY NOT HAVE TELEPHONE SERVICE AT THE TIME OF CLOSING. YOU ARE ADVISED TO CONTACT YOUR SERVICE PROVIDER TO DETERMINE THE STATUS OF TELEPHONE SERVICE. YOU MAY ALSO WANT TO CONSIDER TEMPORARY ALTERNATIVES, IE. A CELLULAR TELEPHONE.

Piped Propane Gas: Energy West (520-474-2294) with present facilities adjacent to the subdivision. Energy West is responsible for completion of the facilities to the lot lines with an estimated completion date of September 30, 2001. There will be no additional costs of completion of facilities to lot line or from lot line to dwelling. There may be an \$85 deposit required as well as a \$25 establishment fee and a \$5 service fee monthly.

Water: Shared well agreements, with Strawberry Hollow Development, Inc. being responsible for completion of the facilities to the lot lines. Completion of the facilities to the lot line is estimated to be September 30, 2001. Fire hydrants will be installed by September 30, 2001, with no additional costs to the lot purchasers. Maintenance of the water lines within the subdivision (other than from lot line to dwelling) will be the responsibility of the Property Owners' Association. See attached Exhibit B.

Arizona Department of Water Resources, in its Water Adequacy Report #22-400383 dated September 12, 2000, stated:

"Strawberry Hollow Phase I, is being sold with the domestic water supply to be provided by the Strawberry Hollow Development, Inc. water distribution system as a homeowner's association or improvement district which has yet to be established. Groundwater is being produced from the Redwall limestone. The limited availability of data associated with this formation as an aquifer does not allow for determination of the amount of the groundwater in storage, nor the dependability of supply. Additionally, this general area has been determined to be drought-sensitive. The depth to groundwater may range from 21 to over 1200 feet below land surface depending on topography. Groundwater quality is unknown. Because a 100-year adequate water supply has not been demonstrated, the Department of Water Resources must find the water supply to be *inadequate*."

REGISTRATION NO. DM01-027239

STRAWBERRY HOLLOW PHASE I

Sewage Disposal: Arizona Department of Environmental Quality requires the Public Report include, but shall not be limited to:

- a. If the construction of sanitary facilities and submittal of "as-built" plans and construction documentation to ADEQ by the subdivider is not completed by April 30, 2003, this Certificate of Approval of Sanitary Facilities for Subdivision is void pursuant to Arizona Administrative Code R 18-4-505.E and/or R 18-9-804.F.
- b. Lots 9 thru 16 are located partially within the 100-yr floodplain.
4. This Approval to Construct applies only to Strawberry Hollow, Phase 1, Lots 1 thru 41, and not to any subsequent units or phases of the Strawberry Hollow subdivision.
5. No 'discharge' to the 'waters of the United States' pursuant to Sections 301, 309, 402, and 502 of the federal Clean Water Act (CWA) are authorized by this approval. If this project results in discharge to these waters, CWA permits are necessary before commencing the discharge, pursuant to the Code of Federal Regulations Titles 33 and/or 40. Any construction in a watercourse shall comply with all terms and conditions of the Section 404 Permit program which is administered by the U.S. Army Corps of Engineers."

The provider will be Strawberry Hollow Waste Water Improvement District. The estimated costs to connect are: service line hookup charge - \$150; establishment fee - \$25; grinder pumps required on Lots 1, 2, 18, 39, 40, 41 equipment costs - \$2,500-\$3,000; installation - \$1,500-\$2,000. The estimated date of completion to lot lines is September 30, 2001.

The Developer will be responsible for completion of the sewage collection and disposal facilities to the lot lines with an estimated completion date of facilities to the lot lines of September 30, 2001. The Improvement District is responsible for maintenance of the sewage collection and disposal facilities within the subdivision other than from lot line to dwelling. The Improvement District assessment will be included in the real estate taxes.

THE ABOVE COSTS ARE SUBJECT TO CHANGE BY SERVICE PROVIDERS. YOU SHOULD CONTACT THE ABOVE PROVIDERS REGARDING EXTENSION RULES AND REGULATIONS, SERVICE CONNECTIONS AND COSTS INVOLVED.

STREETS, ROADS AND DRAINAGE

Access to the Subdivision: Legal and permanent access to the subdivision, and the lots within, is provided for conventional 2-wheel drive automobiles and emergency vehicles. The exterior streets are public, though not yet complete. Developer is responsible for completion of the street with an estimated completion date of September 30, 2001. Surfacing for the

E X H I B I T B

MAINTENANCE COMPANY RULES

1. **Authority.** These rules are made pursuant to that certain recorded Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Strawberry Hollow recorded on March 20, 2001, at Fee No. 2001 3946 in the office of the Gila County Recorder, Gila County, Arizona (the "Declaration"). Capitalized terms used herein have the same meanings as in the Declaration.

2. **Connections.** A maximum of one connection shall be made to each Lot. Such connection shall be made at the water line stubout to the Lot, and no individual connection shall be made directly to any main water storage tank that is part of the Well System. The connection shall be inspected by the Maintenance Company prior to use.

3. **Water meters.** An individual water metering system will be required for each Lot, with the meter to be located at the stubout to such Lot upstream of all water uses on such Lot.

4. **Backflow preventers.** At the time of connecting his or her Lot to the Well System stubout, each member shall install a backflow preventer at the stubout sufficient to prevent any backflow of water into the Well System water lines. The member shall maintain the backflow preventer in good working condition at all times and shall inspect and repair or replace it as necessary.

5. **Fees and charges:**

Deposits: Each member shall pay a deposit of thirty dollars (\$30.00) at the time of connecting to the Well System. Deposits may be applied against any monies due from such member and shall be promptly replenished by the member.

Late fee: A late fee in the amount of twenty dollars (\$20.00) shall be payable for all amounts due under the Declaration or these Rules and not paid in full within fifteen (15) days after the due date. All such amounts that are invoiced to a member shall be due ten (10) days after the postmarked date of the invoice, if mailed, or the delivery date of the invoice, if hand delivered.

Interest: Interest at the prime rate of interest charged by Wells Fargo Bank or its successor plus two percent (2%) per annum shall be payable on the unpaid balance of all payments due under the Declaration or these Rules and not paid in full within thirty (30) days after the due date. Interest shall commence to accrue upon the expiration of such thirty (30) day period.

Disconnection and reconnection fees: Each member shall pay all costs of having their water service shut off or restarted for any reason. A member whose water service is shut off must still pay the Maintenance Company a minimum monthly fee established from time to time by the Directors for the availability of the Well System water supply.

Repair and Replacement Reserves: The Maintenance Company shall be entitled to establish reasonable reserves in an amount determined by the Directors from time to time.

6. Disposition of monies. Monies collected with respect to the Well System under the Declaration or these Rules shall be used only for purposes related to the Well System.

7. Amendment. These Rules may be amended from time to time, and at any time, as set forth in the Declaration.

AGREEMENT TO RULES:

_____ [print name], as the buyer of a lot in Strawberry Hollow, hereby acknowledges and agrees that he/she/they have read the foregoing Maintenance Company Rules, the Rules apply to the Lot buyer is purchasing, and buyer will comply with all of the Rules, as properly amended from time to time.

Signature of buyer

Signature of buyer

Signature of buyer

E

XII. SHARED WATER SYSTEM / CO-TENANCY

A. Co-Ownership and Maintenance of Water System. Each Owner shall, by reason of ownership of a Lot, own a percentage share interest of the private water system ("Well System") included within the Property and as more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference. The Owners, acting as co-tenants, shall be responsible for the operation, maintenance, repair and replacement of the Well System (or such portions thereof as may be designated on Exhibit "B"), subject to all the provisions of this Declaration. The Well System shall be used and maintained for the sole benefit of the Property and the owner(s) and residents thereof, in accordance with the provisions of this Declaration. The percentage ownership interest of each Owner shall be appurtenant to, and shall automatically pass with title to, such Owner's Lot. The percentage ownership interest for each Lot shall be equal to the percentage ownership interest for each other Lot to which ownership of all or a portion of the Well System is appurtenant as designated on Exhibit "B." The total aggregate percentage interest appurtenant to all of the Lots to which ownership or all or a portion of the Well System is appurtenant shall be one hundred percent. The individual percentage interests for each Lot shall automatically change from time to time if and as additional lands are subjected to this Declaration. If there are multiple wells included in the Well System, each Lot shall have an appurtenant ownership interest in only one well, but may also have appurtenant ownership interests in waterlines, storage tanks, and other equipment or facilities that may serve all or a significant number of Lots. No partition of the Well System, or any portion thereof, shall be sought or allowed for any reason whatsoever.

Voting power with respect to all matters related to the Well System shall be identical to the voting power of the Owners and Declarant with respect to Association matters from time to time, and all matters related to the Well System shall be determined by a majority vote of the voting power entitled to vote thereon ("Majority Vote"). By Majority Vote, the Owners may employ the services of one or more professionals to operate, maintain and in all respects manage the Well System. By Majority Vote, the Owners may contract with, or delegate tasks or functions related to the Well System to, Declarant, affiliates of Declarant, the Association and/or other persons or entities authorizing such persons to act on behalf of all Owners.

B. Connections to Well System. Each Owner shall pay all costs associated with connecting such Owner's Lot to the water line stubout to such Owner's Lot, including without limitation any inspections thereof by a manager employed by the Owners by Majority Vote for such purpose. Each connection shall be constructed in compliance with all applicable codes and health, safety and environmental laws and regulations, and in a good workmanlike manner so as to minimize disruption of service to other Lots.

C. Owners' Obligations. Each Owner shall pay an equal share of all costs related to the Well System, including without limitation routine and extraordinary operation, maintenance, repair, replacement, and upgrading of the Well System. The fiscal manager selected by the Owners by Majority Vote shall submit periodic invoices to the Owners, and each invoice shall be due no later than thirty days after it is sent by the manager. If any invoice is not paid within sixty days after the date it is due, the fiscal manager shall have the right, without notice to the delinquent Owner, to enforce payment in accordance with the Assessment Lien provisions hereof. By Majority Vote, the Owners may determine to calculate their cost sharing in whole or in part on the amount of water used on each Lot.

D. Well System Rules. By Majority Vote, the Owners may from time to time adopt and amend reasonable rules for the use by the Owners, and the fair and efficient operation and management of, the Well System (the "Well System Rules"). The Well System Rules shall not

unfairly or unreasonably discriminate against any Lots or Owners. The Well System Rules may, without limitation, provide for prudent fiscal planning and proper operation, maintenance, repair and replacement of the Well System, including without limitation deposits, reasonable reserves, insurance, water quality and well yield testing, meters, enforcement of the provisions of this Agreement relating to the Well System, backflow prevention, limitations on the use of the Well System, late fees and interest on late payments, charges for temporarily or permanently connecting or terminating water service, any other appropriate monetary provisions, and any other subjects that are necessary or appropriate to the safe and efficient management of the Well System.

Water service to any Owner who fails to perform fully, timely and in good faith, any obligation of such Owner related to the Well System under this Declaration or the Well System Rules, may be terminated without any liability whatsoever to the Owner whose service is terminated. Any connection to the Well System that is not authorized by this Declaration may be disconnected without any liability whatsoever to the person(s) benefitted by the connection. The non-defaulting Owners shall additionally have all rights and remedies available to them under applicable law, and all of their rights and remedies under this Declaration and applicable law are cumulative and not exclusive and may, by Majority Vote, be temporarily assigned or delegated to one or more Well System managers selected by Majority Vote.

E. Limitation on Declarant's Liability. If, after Declarant no longer owns any portion of the Property, any problems of any nature whatsoever arise with respect to the Well System, including without limitation insufficient water quantity, poor water quality, the need for repair or replacement, or regulatory burdens, the Owners shall have the sole obligation and responsibility to resolve such problems at their sole expense as cotenants and Declarant shall have no responsibility or liability whatsoever with respect to any such problems or the resolution thereof.

F. Transfer of Well System to Special District or Public Utility. By Majority Vote, the Owners may at any time determine to transfer ownership and control of the Well System (or portions thereof) to any special district or public service corporation that is then authorized and able to provide public water service to the Property. Any such transfer shall be on such terms and conditions as the Owners approve by Majority Vote. The transfer shall be effected by a deed and/or other appropriate instruments of transfer in form approved by Majority Vote, and shall be sufficient if executed by Declarant while Declarant is the Class B Member, or by the Board when Declarant is no longer the Class B Member, and for this purpose each Owner hereby grants Declarant and the Board such Owner's irrevocable power of attorney to execute such instrument(s) on such Owner's behalf and to bind and transfer such Owner's interest in the Well System. Neither Declarant nor the Board shall have any liability whatsoever to any Owner for a transfer of all or any portion of the Well System made pursuant to this paragraph, and each Owner hereby waives all claims related thereto.

XIII. DURATION

The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a period of 20 years from the date the Declaration is recorded in the Official Records of Gila County, Arizona, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years.

1. All or any part of this Declaration may be amended or terminated during the first 20 years by a recorded instrument signed by the Owners of not less than 90% of the Lots; provided, that while Declarant is an Owner, no amendment shall be made without Declarant's consent.

2. After said 20 years, all or any part of the Declaration may be amended or terminated by a recorded instrument signed by the Owners of not less than 90% of the Lots.

EXHIBIT "B"

STRAWBERRY HOLLOW WATER SYSTEM DESCRIPTION

The water system to serve Strawberry Hollow will consist of a new well, registration no. 55-579973, a 140,000-gallon storage tank, 1000 gallon hydropneumatic tank, and booster pumping system. The proposed system will be operated and maintained by a property owner's association and consists primarily of PVC piping 8-inches, 6-inches, 4-inches and 2-inches in diameter.

The goal of the water distribution system is to provide future residents of Strawberry Hollow with adequate water for normal domestic use and emergency fire protection.