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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
Chairman

AZ CORP COMMISSION
DOCUMENT CONTROL

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner

PINE WATER COMPANY, an Arizona corporation,)
Complainant,)

vs.)

STRAWBERRY HOLLOW DEVELOPMENT,)
INC., an Arizona corporation, STRAWBERRY)
HOLLOW PROPERTIES, L.L.C., an Arizona)
limited liability company, and STRAWBERRY)
HOLLOW PROPERTY OWNER'S)
ASSOCIATION, INC., an Arizona non-profit)
corporation,)

Respondents.)

DOCKET NO. W-^{03512A}03152A-01-0464

Arizona Corporation Commission
DOCKETED

AUG 22 2001

DOCKETED BY *mac*

MOTION TO DISMISS WITHOUT PREJUDICE

Strawberry Hollow Development, Inc.; Strawberry Hollow Properties, L.L.C.; and Strawberry Hollow Property Owners Association, Inc. (collectively referred to herein as "Respondents") hereby request an order dismissing the instant complaint without prejudice and administratively closing this docket. Respondents have abandoned any and all plans to provide water service to the Strawberry Hollow subdivision or, for that matter, anyone else in the state of Arizona. Respondents have also decided to withdraw their pending request for deletion from the Pine Water Company service area. See Exhibit A (Affidavit of Loren Peterson), attached. Thus, all the issues raised by the instant Complaint are now moot, and this matter should be taken off the Arizona Corporation Commission's ("Commission") pending matters and administratively

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 closed as soon as possible. In contemplation thereof, Respondents also ask the Commission to
2 cancel the presently scheduled hearing on this matter and terminate any pending or additional
3 discovery, either by way of a separate procedural order or as part of the order administratively
4 closing this docket.

5 **ARGUMENT**

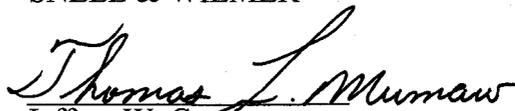
6 On August 14, 2001, the entire area of the Strawberry Hollow subdivision was
7 incorporated within the newly formed Strawberry Hollow Domestic Water Improvement District
8 ("Improvement District"). See Exhibit B (Resolution of Gila County Board of Supervisors),
9 attached. Respondents are presently negotiating a water service agreement with the Improvement
10 District and intend to rely solely on that entity for water service to the subdivision. As the
11 Commission is no doubt aware, the Improvement District is a "municipal corporation." See
12 Article 13, Section 7 of the Arizona Constitution and A.R.S. § 48-909. It is exempt from all
13 Commission jurisdiction pursuant to Article 15, Section 2 of the Arizona Constitution. Subject to
14 the payment of monetary compensation under specified circumstances, the Improvement District
15 can serve customers even within the certificated area of a private water utility such as Pine Water
16 Company. See A.R.S. § 48-909. Moreover, Pine Water Company's entitlement, if any, to such
17 compensation and the nature of that compensation will have to be determined in Gila County by a
18 court of law and not by the Commission, and certainly not in the instant complaint proceeding.

19 In sum, there are no longer any issues before the Commission or within the Commission's
20 jurisdiction to decide. This docket is simply a continuing waste of the resources for both the
21 litigants and the Commission. Finally, and as an additional safeguard against any hypothetical
22 concern on the part of either Pine Water Company or the Commission that Respondents might at
23 some future date again change their plans and return to the original concept of a consumer-owned
24 non-profit water utility (rather than receiving water service from the Improvement District),
25 Respondents would agree that the dismissal of the complaint be without prejudice. This would
26

1 permit Pine Water Company to refile its complaint (and for Respondents to renew their request
2 for deletion) if and when Respondents evidenced any such change in their plans.

3 RESPECTFULLY submitted this 22nd day of August, 2001.

4 SNELL & WILMER

5 

6 Jeffrey W. Crockett
7 Thomas L. Mumaw

8 Attorneys for Strawberry Hollow Development, Inc.;
9 Strawberry Hollow Properties, L.L.C.; and
10 Strawberry Hollow Property Owner's Association,
11 Inc.

12 ORIGINAL and ten (10) copies of the
13 foregoing Motion have been filed
14 with Docket Control this 22nd day of
15 August, 2001.

16 A COPY of the foregoing Motion
17 has been faxed or mailed this 22nd day
18 of August, 2001, to:

19 Jay L. Shapiro, Esq.
20 Thomas R. Wilmoth
21 FENNEMORE CRAIG PC
22 3003 North Central Avenue, Suite 2600
23 Phoenix, Arizona 85012-2913

24 Christopher Kempley, Chief Counsel
25 Legal Division
26 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Acting Director
Utilities Division
ARIZONACORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Dwight D. Nodes, Administrative Law Judge
Hearings Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

27 
28 Judith Borrego

29 Mumaw\PHX\1055820

EXHIBIT A

AFFIDAVIT OF LOREN PETERSON

STATE OF ARIZONA)
) ss:
COUNTY OF GILA)

I, Loren Peterson, am the President of Strawberry Hollow Development, Inc.; and Manager Member of Strawberry Hollow Properties, L.L.C.; and am also the President of Strawberry Hollow Property Owner's Association, Inc. (collectively referred to herein as "Respondents"), and I hereby state and affirm the following:

1. I am the developer of a subdivision within Gila County in the general vicinity of Pine, Arizona, called Strawberry Hollow.

2. At the time of the filing of a complaint before by Arizona Corporation Commission ("Commission") by Pine Water Company in Docket No. W-03152A-01-0464, it was my intent that the above subdivision receive potable water from a customer-owned non-profit association that would not constitute a "public service corporation" under Arizona law.

3. On August 14, 2001, the Strawberry Hollow subdivision was incorporated within the Strawberry Hollow Domestic Water Improvement District ("Improvement District") by action of the Gila County Board of Supervisors.

4. I am presently negotiating a water service agreement for the Strawberry Hollow subdivision with the Improvement District and have completely and irrevocably abandoned the intent to have potable water service provided by any of the Respondents to either the Strawberry Hollow subdivision or any other party in Arizona.

FURTHER THE AFFIANT SAYETH NOT.

By: *Loren Peterson*
Loren Peterson
201 Trailwood Road
Payson, AZ 85541

I certify and attest that Loren Peterson appeared before me this 16 day of August, 2001, and executed the foregoing Affidavit.



Sandra K. Pettet
NOTARY PUBLIC

My Commission Expires:

6-7-2004

Order

Establishing the Strawberry Hollow Domestic Water Improvement District

WHEREAS, a petition requesting the establishment of the Strawberry Hollow Domestic Water Improvement District was presented to the Clerk of the Gila County Board of Supervisors; and

WHEREAS, the said petition was signed by one hundred percent of the persons owning real property within the boundaries the proposed district; and

WHEREAS, the petitioners provided a copy of a record search that shows the names of the owners of all the property located within the boundaries of the proposed district, pursuant to the provisions of Arizona Revised Statutes §48-905(C); and

WHEREAS, the public convenience, necessity and welfare will be promoted by the establishment of the proposed district; and

WHEREAS, the area included within the boundaries of the proposed district as those boundaries described in the petition, will be benefited by the acquisition of certain improvements within the district.

NOW, THEREFORE, It is Ordered as follows:

1. The Board of Supervisors finds that:
 - a. The Board of Directors of the Pine-Strawberry Water Improvement District met in an open meeting on the 11th day of August, 2001. At such time Resolution No. 01-08-11, attached hereto and incorporated herein by reference as Exhibit C, was passed and adopted deleting the property known as Strawberry Hollow Development from the boundaries of the Pine-Strawberry Water Improvement District.
 - b. The property located within the boundaries of the proposed domestic water improvement district is the property known as Strawberry Hollow Development, as those set forth in Exhibits A and B attached hereto and incorporated herein by reference.
 - c. The petition requesting the establishment of the district conforms with all legal requirements relating to the formation of a domestic water improvement district, and the definition and establishment of the boundaries of a domestic water improvement district.
 - d. The petition is signed by one hundred percent of the persons owning real property within the boundaries of the district, as provided by Arizona Revised Statutes §48-905(C);

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
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- e. The public convenience, necessity and welfare will be promoted by the establishment of the district and the property included within the district will be benefited thereby.
- 2. That the district shall be known in all proceedings as the Strawberry Hollow Domestic Water Improvement District.
- 3. That the boundaries of the Strawberry Hollow Domestic Water Improvement District shall be those set forth in Exhibits A and B, attached hereto and incorporated herein by reference.
- 4. That by virtue of the authority set forth in Arizona Revised Statutes §48-906 the Strawberry Hollow Domestic Water Improvement District is hereby established and formed, and shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out the provisions of Title 48, Chapter 6, Article 1 of the Arizona Revised Statutes.
- 5. That in accordance with Arizona Revised Statutes §48-915, the Strawberry Hollow Domestic Water Improvement District is authorized to incur debt or expenses for property, materials and services that are reasonably necessary for District purposes.
- 6. That in accordance with Arizona Revised Statutes §48-1012 the Strawberry Hollow Domestic Water Improvement District shall be governed by an elected three member board of directors. The first election shall be held on the first Tuesday after the first Monday in November, 2002, with subsequent elections being held in even-numbered years on the first Tuesday after the first Monday in November. The initial governing board of directors is appointed as follows:
 - 1. Loren B. Peterson 2. Diane F. Peterson 3. Sarah D. Peterson
- 7. That on or before November 1, 2001, request be made to the Property Valuation Division of the Arizona State Department of Revenue, that the established Strawberry Hollow Domestic Water Improvement District be approved for assessment and tax levy authority.

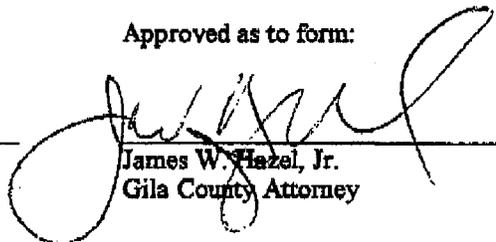
ADOPTED This 14th day of August, 2001, at Globe, Gila County, Arizona.


 Cruz Sales, Chairman
 Gila County Board of Supervisors

Attest:

Approved as to form:


 Steven L. Besich, Clerk
 Gila County Board of Supervisors


 James W. Hazel, Jr.
 Gila County Attorney

AUG-17-2001 15:01

GILA COUNTY SUPERVISORS

P.04/13

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
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Exhibit A

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
DATE: 08/17/2001 TIME: 02:24 PAGE #: 0004 OF 0012 FEE #: 2001 12717

EXHIBIT "A"

Lots 1 through 41, and Tracts A through J, of STRAWBERRY HOLLOW,
PHASE 1, according to the plat of record in the office of the County
Recorder of Gila County Arizona, recorded in Map No. 732A and 732B.

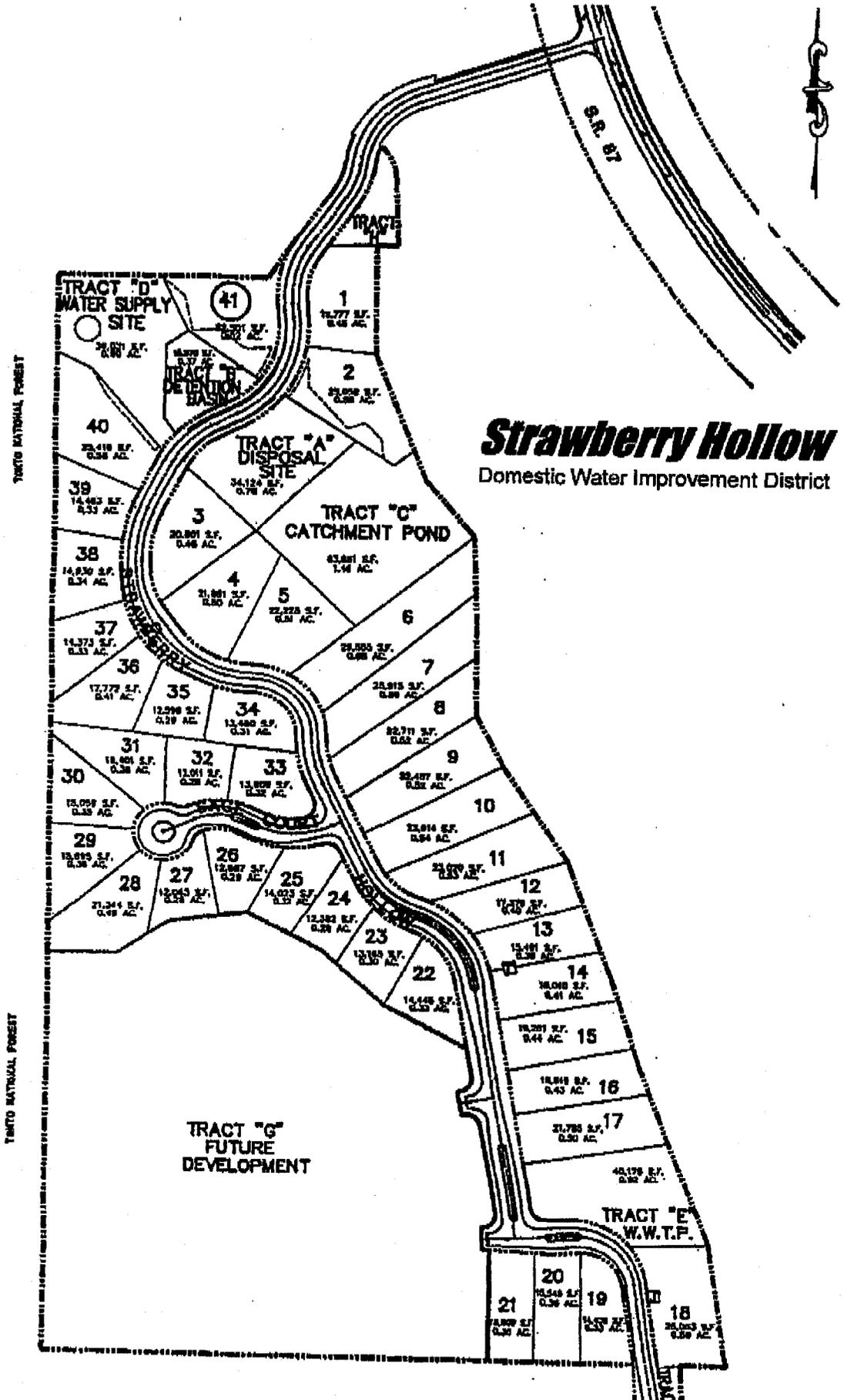
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GILA COUNTY SUPERVISORS

P.06/13

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
DATE: 08/17/2001 TIME: 02:24 PAGE #: 0005 OF 0012 FEE #: 2001 12717

Exhibit B



GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
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GILA COUNTY SUPERVISORS

P.08/13

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
DATE: 08/17/2001 TIME: 02:24 PAGE #: 0007 OF 0012 FEE #: 2001 12717

Exhibit C

RESOLUTION NO. 01-08-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT APPROVING THE DELETION OF PROPERTY KNOWN AS THE STRAWBERRY HOLLOW DEVELOPMENT FROM THE BOUNDARIES OF THE PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT

WHEREAS, the Board of Directors ("Board") of the Pine-Strawberry Water Improvement District met in an open meeting on the 11th day of August, 2001, at which a quorum was present; and

WHEREAS, the Board has considered the petition of the owners of real property known as the Strawberry Hollow Development, which is legally described on Exhibit "A," and which is further depicted on the map labeled Exhibit "B," and both of which are attached hereto and incorporated by this reference herein; and

WHEREAS, the petitioners request this Board of Directors to summarily authorize the deletion of the Strawberry Hollow Development from the boundaries of the District; and

WHEREAS, the petition is signed by all of the owners of the real property to be deleted from the District; and

WHEREAS, the Pine-Strawberry Water Improvement District does not have the ability to provide domestic water to the Strawberry Hollow Development; and

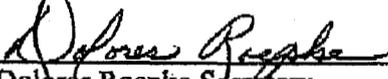
WHEREAS, the Board of Supervisors of Gila County, Arizona has passed a resolution dated July 24, 2001 supporting the deletion of the Strawberry Hollow Development from the District; and

WHEREAS, the Board finds that the petition conforms with all legal requirements relating to the deletion of property from the District, and that the public convenience, necessity and welfare will be promoted by the deletion of the Strawberry Hollow Development from the District.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Pine-Strawberry Water Improvement District approves the deletion of the property depicted and described in the attached Exhibits A and B from the boundaries of the District.

Passed and adopted by the Board of Directors of the Pine-Strawberry Water Improvement District, Gila County, Arizona, this 11th day of August, 2001.

Attest:


Dolores Roepke, Secretary
Pine-Strawberry Water Improvement District

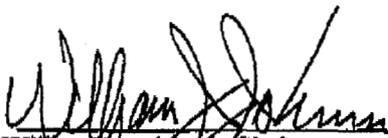

William J. Johnson, Chairman
Pine-Strawberry Water Improvement District

Exhibit A

Strawberry Hollow

Lots 1 through 41, and Tracts A through J, of STRAWBERRY HOLLOW, PHASE 1, according to the plat of record in the office of the County Recorder of Gila County, Arizona, recorded in Map No. 732 A & B.

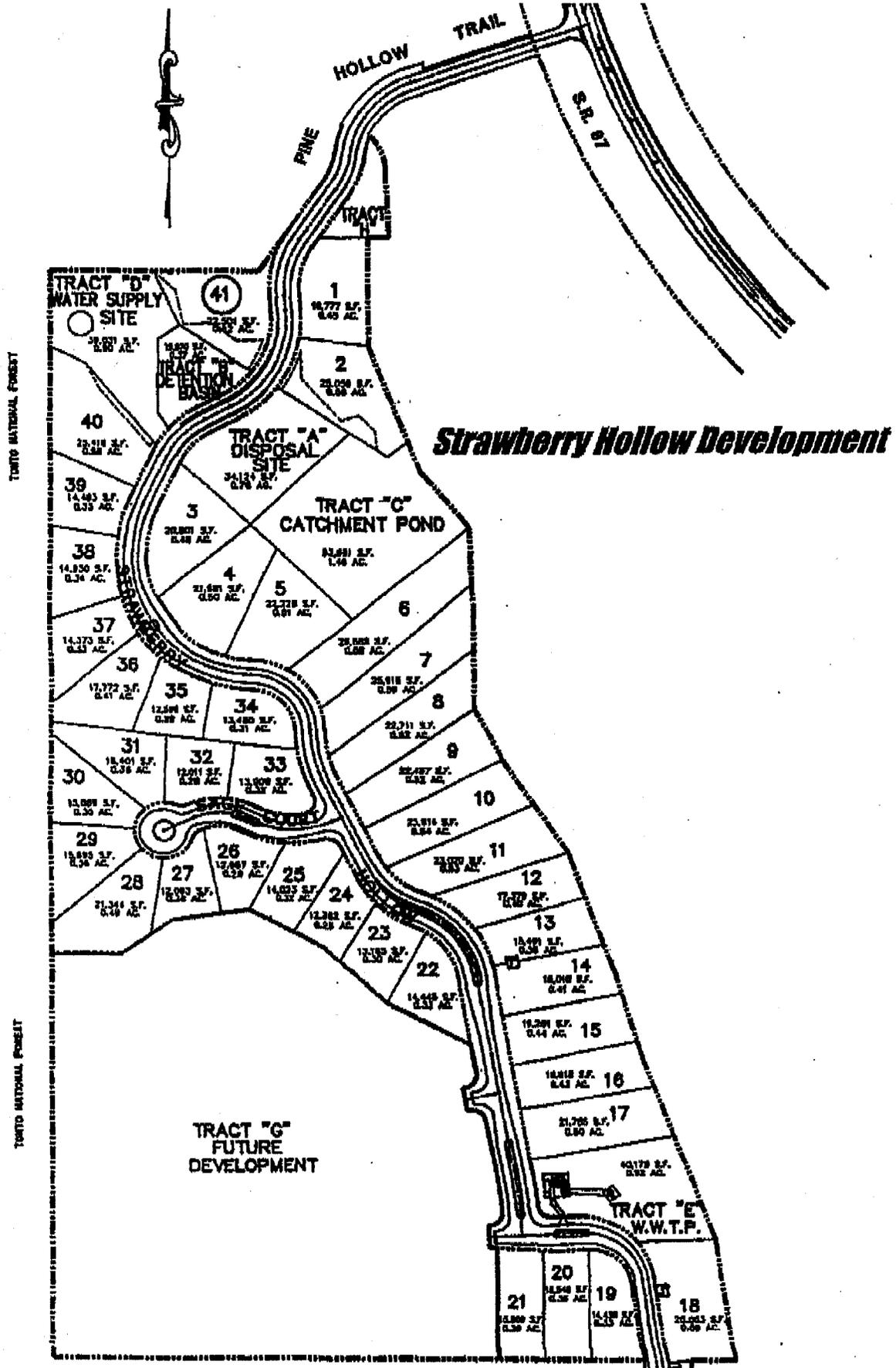
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GILA COUNTY SUPERVISORS

P.12/13

GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
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Exhibit B



GILA CO, AZ, LINDA HAUGHT ORTEGA - RECORDER, BY: GILA COUNTY BOARD OF SUP
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