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Pine Water Company

Arizona Corporation Commission

DOCKETED

AUG 27 2001

DOCKETED BY *ms*

BEFORE THE ARIZONA CORPORATION COMMISSION

PINE WATER COMPANY, an Arizona corporation,

Complainant,

v.

STRAWBERRY HOLLOW DEVELOPMENT, INC., an Arizona corporation, STRAWBERRY HOLLOW PROPERTIES, L.L.C., an Arizona limited liability company, STRAWBERRY HOLLOW PROPERTY OWNER'S ASSOCIATION, INC., an Arizona nonprofit corporation,

Respondents.

Docket No. *W-03512A-01-0464*

COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS; AND APPLICATION TO STAY PROCEEDINGS

Complainant, Pine Water Company (hereafter "Pine Water"), brought this action before the Arizona Corporation Commission ("Commission") because one or more of the Respondents was acting as a public service corporation by intending to provide domestic water utility service within Pine Water's Certificate of Convenience and Necessity ("CC&N"). Now, fearful that the Commission will agree with Pine Water and conclude that Respondents' actions are unlawful, Respondents seek to put "Plan A" on hold while they pursue "Plan B."¹

¹ Plan A involved Respondents providing domestic water utility service to purchasers of lots at their development. Plan A was the basis of Pine Water's Complaint in this action. In contrast, Plan B involves water utility service by a new unregulated domestic water improvement district.

1 However, the relief sought by Respondents' Motion to Dismiss ("Respondents' Motion")
2 is improper. If the Respondents seek to have their cake and eat it too, by preserving the
3 opportunity to return to Plan A - water utility service by Respondents - the appropriate remedy is
4 a stay of these proceedings. Pine Water should not be prejudiced by Respondents' desire to
5 pursue Plan B while simultaneously keeping Plan A alive, thereby requiring Pine Water to bring
6 yet another action before the Commission should Plan B fail. On the other hand, dismissal would
7 be appropriate if Respondents are ready to close the door to Plan A, irrevocably, and represent to
8 the Commission and Pine Water that they will never provide water utility service, irrespective of
9 whether the new district is able to serve.

10 **PINE WATER'S RESPONSE TO RESPONDENTS' MOTION**

11 To begin with, the Commission should note the duplicitous nature of Respondents'
12 conduct in this action. Recently, after learning of the possible formation of a domestic water
13 improvement district, Pine Water submitted the following data request on Respondents:

14 Are Respondents and/or Mr. Peterson aware of any efforts by any party to
15 form a domestic water improvement district or other county improvement
16 district to provide domestic water utility service to the development at
17 Strawberry Hollow?

18 To which, Respondents answered:

19 Respondents object to this question on the grounds of relevance.

20 See Data Requests and Responses, Tab A.²

21 Ignoring that "relevance" is not a proper objection to a discovery request,³ the
22 disingenuous nature of the Respondents' actions should not go unnoticed. While taking steps to
23 form the very district that now provides the impetus for the requested dismissal, Respondents
24 sought to deprive Pine Water of an opportunity to conduct discovery to determine the impact a

25 ² This data request was actually one of three concerning the possible formation of a district. As seen in the
documents attached at Tab A, Respondents responded to each in the same manner.

26 ³ The proper standard is whether the inquiry is "reasonably calculated to lead to the discovery of admissible
evidence." Ariz. R. Civ. P. 26(b).

1 new district would have on these proceedings.

2 Respondents' Motion is equally disingenuous. Pine Water originally filed its complaint in
3 this action in June. Since that time, Respondents have continued to engage in conduct indicative
4 of their intent to act as a public service corporation. See, e.g., Transcript of Deposition of Loren
5 Peterson, July 10, 2001, at 48-50, attached at Tab B. Concurrently, Loren Peterson, Respondents'
6 executive officer, proceeded to delete the Strawberry Hollow development from the boundaries of
7 the Pine Strawberry Domestic Water Improvement District and to obtain the approval of the Gila
8 County Board of Supervisors to form yet another district (the "District") whose boundaries
9 coincide with the Respondents' Strawberry Hollow development.

10 Consequently, Respondents now represent that they "have abandoned any and all plans to
11 provide water service to the Strawberry Hollow Subdivision." Respondents' Motion at 1.
12 However, Respondents have not committed to forever refrain from engaging in the conduct that
13 gave rise to this action. To the contrary, Respondents offer:

14 [A]s an additional safeguard against any hypothetical concern on
15 the part of either Pine Water Company or the Commission, that
16 Respondents might at some future date again change their plans
and return to the original concept ... Respondents agree that
the dismissal of the complaint be without prejudice.

17 Respondents' Motion at 2.

18 Pine Water has challenged Gila County's approval of the District in Gila County Superior
19 Court. See CV 2001-153 (Complaint filed August 20, 2001), copy attached at Tab C. If Pine
20 Water is successful, the District will be precluded from providing water utility service to the
21 Strawberry Hollow development. Then, Respondents will again be looking for a way around this
22 Commission's moratoria on new water service connections in Pine Water's CC&N.⁴ As conceded
23 in Respondents' Motion, Respondents might then return to their original "plan" for water service
24 to the Strawberry Hollow development, the very "plan" that formed the basis of Pine Water's

25 _____
26 ⁴ The same would likely be true if the District is precluded from serving the development because an adequate
source of water is not found, a problem that plagued the Respondents' Plan A as well.

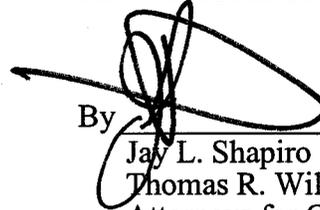
1 initial Complaint. Respondents' Motion at 2.

2 Respondents' offer is cold comfort to Pine Water, which has already incurred substantial
3 costs and attorney's fees in prosecuting this action. Premature dismissal of this action would
4 result in the unnecessary incurrence of additional costs occasioned by re-filing a new complaint in
5 the event Respondents "change their plans and return to the original concept." Therefore, Pine
6 Water respectfully suggests that the proper course at this time is a stay of these proceedings
7 pending resolution of Pine Water's suit against the County. Of course, if Respondents' commit to
8 irrevocably abandon Plan A, Pine Water will agree to dismissal of the current action.

9 DATED this 21st day of August, 2001.

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FENNEMORE CRAIG



By

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

Original and 10 copies
hand-delivered this 27
day of August, 2001 to:

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

1 Copy of the foregoing
hand-delivered this 27
2 day of August, 2001 to:

3 Dwight Nodes
Administrative Law Judge
4 Hearing Division
Arizona Corporation Commission
5 1200 W. Washington St.
Phoenix, AZ 85007

6 Steve Olea, Acting Director
7 Utilities Division
Arizona Corporation Commission
8 1200 W. Washington St.
Phoenix, AZ 85007

9 Teena Wolfe
10 Legal Division
Arizona Corporation Commission
11 1200 W. Washington St.
Phoenix, AZ 85007

12 And a copy mailed to:

13 Jeffrey W. Crockett
14 Thomas L. Mumaw
Snell & Wilmer
15 400 E. Van Buren
Phoenix, Arizona 85004-0001

16 By *Sarah Elliott*
17

18

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August 14, 2001

FACSIMILE AND REGULAR MAIL

Tom Wilmoth, Esq.
Fennemore Craig
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913

*Re: In the Matter of the Formal Complaint of Pine Water Company against
Strawberry Hollow Development, Inc. (Docket No. W-013512A-01-0464)*

Dear Tom:

Enclosed please find Strawberry Hollow Development, Inc.'s responses to Pine Water Company's Fourth Set of Data Requests (Nos. 4.1 through 4.3) in the above-referenced docket.

Very truly yours,

SNELL & WILMER


Jeffrey W. Crockett

JWC:gdb
Enclosures

cc: Jay Shapiro, Esq. (with enclosures)
Loren Peterson (with enclosures)
Tom Mumaw, Esq. (without enclosures)

1051033.1

PINE WATER COMPANY
FOURTH SET OF DATA REQUESTS TO RESPONDENTS
DOCKET NO. W-03512A-01-0464
August 7, 2001

4.1 Admit or deny that Respondents and/or Loren Peterson is (are) seeking to form a domestic water improvement district, or other type of county-authorized improvement district, to provide domestic water utility service to the development at Strawberry Hollow.

4.1(a) If you admit data request number 4.1, please describe all activities taken by Respondents and/or Mr. Peterson to form such a district.

4.1(b) If you admit data request number 4.1, please provide copies of all documents relating to the formation of such a district.

Response: Respondents object to this question on the grounds of relevance. Loren Peterson objects to this question both on grounds of relevance and on the basis that he is neither a respondent nor an intervenor in the proceeding, and thus does not have to answer data requests in his individual capacity.

Prepared by: Jeffrey W. Crockett

PINE WATER COMPANY
FOURTH SET OF DATA REQUESTS TO RESPONDENTS
DOCKET NO. W-03512A-01-0464
August 7, 2001

4.2 Please describe all discussions Respondents and/or Mr. Peterson have had with any representative or employee of Gila County concerning the formation of a domestic water improvement district, or other county-authorized improvement district at Strawberry Hollow.

4.2 (a) In answering data request number 4.2, please include the names of any participants, a description of the conversation's substance, and any conclusions reached or actions taken as a result of such discussions.

Response: Respondents object to this question on the grounds of relevance. Loren Peterson objects both to this question on grounds of relevance and on the basis that he is neither a respondent nor an intervenor in the proceeding, and thus does not have to answer data requests in his individual capacity.

Prepared by: Jeffrey W. Crockett

PINE WATER COMPANY
FOURTH SET OF DATA REQUESTS TO RESPONDENTS
DOCKET NO. W-03512A-01-0464
August 7, 2001

4.3 Are Respondents and/or Mr. Peterson aware of any efforts by any party to form a domestic water improvement district, or other county improvement district to provide domestic water utility service to the development at Strawberry Hollow.

4.3(a) If the answer to data request number 4.3 is yes, please describe the nature of these efforts, the party pursuing such efforts, how you became aware of these efforts, and their current status.

Response: Respondents object to this question on the grounds of relevance. Loren Peterson objects both to this question on grounds of relevance and on the basis that he is neither a respondent nor an intervenor in the proceeding, and thus does not have to answer data requests in his individual capacity.

Prepared by: Jeffrey W. Crockett

B

BEFORE THE ARIZONA CORPORATION COMMISSION

PINE WATER COMPANY, an Arizona)
corporation,)
)
Complainant,)
)
vs.) Docket No.
) W-013512A-01-0464
STRAWBERRY HOLLOW DEVELOPMENT,)
INC., an Arizona corporation,)
STRAWBERRY HOLLOW PROPERTIES,)
L.L.C., an Arizona limited)
liability company, STRAWBERRY)
HOLLOW PROPERTY OWNERS)
ASSOCIATION, INC., an Arizona)
not-for-profit corporation,)
)
Respondents.)
_____)

DEPOSITION OF LOREN B. PETERSON

Phoenix, Arizona
July 10, 2001
10:24 a.m.

REPORTED BY:
LORENA MARIN-GARCIA, RMR-CRR
Certified Court Reporter
Certificate No. 50541



PREPARED FOR:
Arizona Corporation Commission 3030 North Central Avenue, Suite 605
Phoenix, Arizona 85012
(Original) (602) 264-2230 Fax (602) 264-2245

1 Q. Well, is there a document that I can point
2 to that says "Well Sharing Agreement" or that qualifies
3 as that or a well sharing agreement between property
4 owners and Strawberry Hollow Development?

5 A. No.

6 Q. Have buyers, to your knowledge, raised any
7 questions regarding the homeowners association --

8 A. I don't know of any specific questions.

9 Q. -- or its role in the provision of water?

10 A. I don't get involved specifically with the
11 buyers.

12 Q. Okay. Who is responsible for putting in the
13 water utility infrastructure?

14 A. Strawberry Hollow Development.

15 Q. Okay. Who have you hired to do that?

16 A. Intermountain West Constructors.

17 Q. And they'll -- in fact, they are in the
18 process of doing that now; correct?

19 A. Yes.

20 Q. Have they put pipes in the ground yet?

21 A. On the ground.

22 Q. So they've designed a system?

23 A. No. The engineer has designed it.

24 Q. I'm sorry. A system has been designed?

25 A. Yes.

1 Q. Okay. And the pipe is laying on the ground
2 and nearby the place where it's going to go?

3 A. You're asking about the pipes. Yes, I have
4 seen the water pipes.

5 Q. That's the white PVC mains that are out
6 there?

7 A. I believe it's PVC.

8 Q. Okay. And when do you expect to have that
9 system completed?

10 A. Originally, I expected to have it completed
11 in September. At this point we may have changed our
12 schedule.

13 Q. Again, as a result of this litigation?

14 A. Yes.

15 Q. Okay. Do you --

16 A. That and other things.

17 Q. Do you intend -- is it your intent to go
18 forward and sink those pipes, for lack of a better
19 term?

20 A. And what?

21 Q. Put them underground as soon as you can?

22 A. Yes.

23 Q. Okay. So the existence of the litigation is
24 not precluding you from installing the water
25 distribution system as soon as practical?

1 A. I don't know if I understood that question.

2 Q. Well, the pipes are laying on the ground,
3 and it's your intent to put them under the ground as
4 soon as you're able to do so?

5 A. Yes.

6 Q. This litigation is not stopping you from
7 doing that?

8 A. Not directly.

9 Q. Okay. Indirectly?

10 A. Yes.

11 Q. Please explain.

12 A. The way the system's been designed includes
13 fire protection, as well as domestic water production.

14 Q. Okay.

15 A. This dispute concerns only domestic water
16 distribution.

17 Q. Okay.

18 A. I have talked to the engineer about the
19 prospect of redesigning the water system to be two
20 separate systems, one being the domestic water and the
21 other being fire prevention. I don't know if it's
22 feasible to do that.

23 There's another aspect of this that the
24 funding of the property, of the construction costs, is
25 based on the sales of the lots.

C

AUG 20 2001

MARGARET TCOI, Clerk

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4 Telephone: (602) 916-5000
Attorneys for Plaintiff
5 Pine Water Company

6
7
8 SUPERIOR COURT OF ARIZONA

9 GILA COUNTY

10 PINE WATER COMPANY, an Arizona
11 corporation,

12 Plaintiff,

13 v.

14 GILA COUNTY, a political subdivision of
the State of Arizona;

15 STRAWBERRY HOLLOW DOMESTIC
16 WATER IMPROVEMENT DISTRICT, a
political subdivision of the State of Arizona;

17 BOARD OF SUPERVISORS OF GILA
18 COUNTY;

19 CRUZ SALAS, in his capacity as Chairman
of the Gila County Board of Supervisors;

20 JOSE SANCHEZ, in his capacity as a
21 Member of the Gila County Board of
Supervisors;

22 and

23 RONALD CHRISTENSEN, in his capacity
24 as a Member of the Gila County Board of
Supervisors,

25 Defendants.
26

Docket No. CV 2001-153

COMPLAINT

**(Declaratory Judgment)
(Injunctive Relief)
(Special Action)**

1 Plaintiff, Pine Water Company (hereafter "Pine Water"), for its complaint, states and
2 alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Pine Water is an Arizona corporation engaged in the business of providing domestic water
5 utility service to customers in Pine, Gila County, Arizona. As such, Pine Water is subject to
6 regulation by the Arizona Corporation Commission ("Commission") as a public service
7 corporation subject to rates and charges established by the Commission.

8 2. In June, 1998, the Commission approved a transfer of the assets and certificates of
9 convenience and necessity ("CC&N") from E&R Water Company and Williamson Waterworks,
10 Inc., to Pine Water. Pine Water thereby acquired and now holds a CC&N obligating and
11 entitling it to provide domestic water utility service to customers in Pine, Arizona.

12 3. Defendant Gila County is a political subdivision of the State of Arizona.

13 4. Defendant Gila County Board of Supervisors (the "Board") is the governing body of Gila
14 County.

15 5. Defendant Strawberry Hollow Domestic Water Improvement District ("Strawberry
16 Hollow District") is a newly formed political subdivision of the State of Arizona.

17 6. Defendant Cruz Salas is a member, and currently the chairman of, the Board, and is sued
18 in his official capacity.

19 7. Defendant Jose Sanchez is a member of the Board, and is sued in his official capacity.

20 8. Defendant Ronald Christensen is a member of the Board, and is sued in his official
21 capacity.

22 9. This Court has jurisdiction pursuant to A.R.S. §§ 48-907, 12-1801 et seq., A.R.S. § 12-
23 1831 et seq., and Rules 3(b) and (c) of the Arizona Rules of Procedure for Special Actions.

24 10. Venue is appropriate under A.R.S. § § 12-401 and 48-907.

25 **GENERAL ALLEGATIONS**

26 11. The territory now served by Pine Water, including the development community known as

- 1 Strawberry Hollow (the "Property"), has historically experienced significant water shortages.
- 2 12. In the late 1980s, the Commission ordered various moratoria on new connections and/or
3 main extensions in the area previously served by E&R Water Company and now served by Pine
4 Water, including the Property.
- 5 13. In July, 1996, the Commission limited E&R Water Company to connecting "one single
6 family residential connection per month on a first come first served basis," at the Property and
7 elsewhere in Pine Water's certificated area. That decision continued the complete moratorium on
8 new main extensions, which moratorium remains in place today.
- 9 14. Strawberry Hollow Properties, LLC, Strawberry Hollow Development, Inc., First
10 American Title Company as Trustee under Trust No. 8519, Loren Peterson, Diane Peterson, and
11 Sarah Peterson (collectively "Developers") own and are attempting to develop the Property.
- 12 15. Loren Peterson is the President of Strawberry Hollow Development, Inc., and a member
13 of Strawberry Hollow Properties, LLC.
- 14 16. Developers intend to develop and sell 72 residential lots within the Property.
- 15 17. The Property does not have access to water supplies that are adequate to meet its projected
16 long-term residential demand, and on September 12, 2000, the Arizona Department of Water
17 Resources informed the Arizona Department of Real Estate that "[b]ecause a 100-year adequate
18 water supply has not been demonstrated, the Department of Water Resources must find the water
19 supply [for the Property] to be *inadequate*." (Emphasis in original.)
- 20 18. Developers previously approached Pine Water for domestic water utility service, but were
21 denied such service based on the Commission's moratoria; however, Pine Water is willing and
22 able to serve Developers and the Property in the event the Commission moratoria are vacated or
23 modified.
- 24 19. Developers have long sought domestic water utility service from an alternative provider
25 not subject to the Commission's moratoria.
- 26 20. Developers attempted to evade the Commission's moratoria by formulating an amorphous

1 plan for water service at the Property involving service by an amalgamation of Strawberry
2 Hollow Development, Inc., Strawberry Hollow Properties, LLC, and a property owner's
3 association.

4 21. Initially, Strawberry Hollow Development, Inc., indicated it would act as the "water
5 provider" at the Property utilizing groundwater distributed through a central distribution system
6 to serve its customers.

7 22. Developers later indicated that water service would be provided through shared well
8 agreements, with Strawberry Hollow Development, Inc., responsible for completion of the
9 facilities to the lot lines and maintenance within the subdivision the responsibility of a property
10 owners' association.

11 23. The covenants conditions and restrictions at the Property provided for the co-ownership
12 and maintenance of a "water system."

13 24. On information and belief, Developers have no concrete plans for water service at the
14 Property.

15 25. On June 6, 2001 Pine Water filed an action before the Commission requesting that
16 Strawberry Hollow Development, Inc., Strawberry Hollow Properties, LLC, and the property
17 owner's association, individually or collectively, be adjudicated a public service corporation
18 subject to Commission regulation, and that those entities be prohibited from infringing on the
19 rights of Pine Water under its CC&N. That action is currently pending before the Commission,
20 with a hearing scheduled for mid-September.

21 26. Until August 11, 2001, the Property was also located within the Pine Strawberry Domestic
22 Water Improvement District.

23 27. Developers attempted to negotiate with representatives of the Pine Strawberry Domestic
24 Water Improvement District to obtain domestic water utility service for the Property, but the
25 attempt was unsuccessful.

26 28. The Pine Strawberry Domestic Water Improvement District does not have the ability to

1 provide domestic water to the Property.

2 29. Having no willing provider to serve his development, Loren Peterson, on behalf of himself
3 and Developers, requested and was granted deletion of the Property from the Pine Strawberry
4 Domestic Water Improvement District on August 11, 2001.

5 30. On August 14, 2001, Gila County, acting through the Board, and at the request of Loren
6 Peterson on behalf of himself and Developers, issued an "Order Establishing the Strawberry
7 Hollow Domestic Water Improvement District." See Exhibit A attached.

8 31. The Strawberry Hollow District overlays a portion of Pine Water's CC&N.

9 32. The Strawberry Hollow District now intends to provide water to the proposed 72
10 residential lots at the Property utilizing groundwater distributed through a central distribution
11 system to serve its customers.

12 33. The Petition indicates that "[w]ater service will be provided to real property within the
13 [Strawberry Hollow District] from Arizona Department of Water Resources Well Registration
14 Nos. 55-579973 and 55-587628, and/or one or more additional wells."

15 34. Well No. 55-579973 is the same well on which Developers relied when seeking (and
16 ultimately being denied) an adequate water supply report from the Arizona Department of Water
17 Resources.

18 35. Well No. 55-587628 has not been constructed, and the ability of that well to supply the
19 domestic water needs of those buying residential lots at the Property is unknown.

20 36. On information and belief, Strawberry Hollow District has no proven source of water
21 adequate to supply the projected demand of property owners within the district.

22 **COUNT 1: DECLARATORY RELIEF**

23 37. Pine Water incorporates the allegations contained in paragraphs 1 through 36 above.

24 38. A county domestic water improvement district may be established only if the Board
25 determines that the public convenience, necessity and welfare will be served by formation of the
26 proposed district. A.R.S. § 48-906(A).

1 39. Because the area within which the Strawberry Hollow District was formed is already
2 served by a water provider with a CC&N, formation of the Strawberry Hollow District is not
3 necessary.

4 40. Given the limited water resources of the Pine area and the existence of the State-imposed
5 moratoria on further domestic water utility service to the Property, formation of the Strawberry
6 Hollow District does not serve the public welfare and harms the public interest.

7 41. Because the Strawberry Hollow District is controlled by and operated for the benefit of
8 only one landowner, it does not serve the "public" as required by Arizona law.

9 42. Establishment of the Strawberry Hollow District does not promote the public
10 convenience, necessity or welfare and harms the public interest.

11 43. The Property will not be benefited by formation of the Strawberry Hollow District
12 because the Strawberry Hollow District does not have access to water supplies sufficient to serve
13 demand within its boundaries.

14 **COUNT 2: INJUNCTIVE RELIEF**

15 44. Pine Water incorporates the allegations contained in paragraphs 1 through 43 above.

16 45. Pine Water is entitled to an order declaring that establishment of the Strawberry Hollow
17 District does not promote the public convenience, necessity or welfare.

18 46. Unless the Defendants are enjoined from acting through the Strawberry Hollow District,
19 the policy underlying the State-imposed moratoria on new water service to the Property will be
20 circumvented.

21 47. Unless the Defendants are enjoined from acting through the Strawberry Hollow District,
22 the ongoing water shortage in Pine, Arizona will be exacerbated.

23 48. Unless the Defendants are enjoined from acting through the Strawberry Hollow District,
24 their actions will infringe on the rights conferred to Pine Water under its CC&N.

25 49. Unless the Defendants are enjoined from acting through the Strawberry Hollow District,
26 their actions will impair Pine Water's ability to serve existing customers.

1 **COUNT 3: SPECIAL ACTION**

2 50. Pine Water incorporates the allegations contained in paragraphs 1 through 49 above.

3 51. Because establishment of the Strawberry Hollow District does not promote the public
4 convenience, necessity or welfare, the Board has exceeded its authority under A.R.S. § 48-
5 906(A).

6 52. Because establishment of the Strawberry Hollow District does not promote the public
7 convenience, necessity or welfare, the Board has acted arbitrarily and capriciously in establishing
8 the Strawberry Hollow District.

9 **PRAYER FOR RELIEF**

10 53. Pine Water seeks an Order:

11 A Declaring that the Board's Order Establishing the Strawberry Hollow Domestic
12 Water Improvement District is invalid as an improper exercise of the Board's
13 authority; and

14 B. Declaring that the Strawberry Hollow District, having been improperly formed, is
15 without authority to conduct any activities authorized by A.R.S., Title 48, Chapters
16 4 and 6; and

17 C. Enjoining the Strawberry Hollow District from taking any action; and

18 D. Requiring the Board to dissolve the Strawberry Hollow District based on its
19 improper formation.

20 54. Pine Water requests such further relief as the Court deems necessary and appropriate
21 under the circumstances.

22 55. Pine Water requests that it be awarded its costs and attorneys' fees as provided under
23 Arizona law.

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DATED this 20th day of August, 2001.

FENNEMORE CRAIG

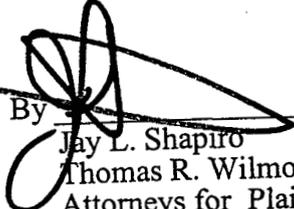
By 
Jay L. Shapiro
Thomas R. Wilmoth
Attorneys for Plaintiff
Pine Water Company

EXHIBIT A

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

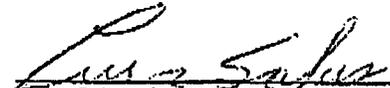
WHEREAS, the area included within the boundaries of the proposed district as those boundaries described in the petition, will be benefited by the acquisition of certain improvements within the district.

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);

- 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 Salas, Chairman
Gila County Board of Supervisors

Attest:

Approved as to form:


Steven L. Besich, Clerk
Gila County Board of Supervisors

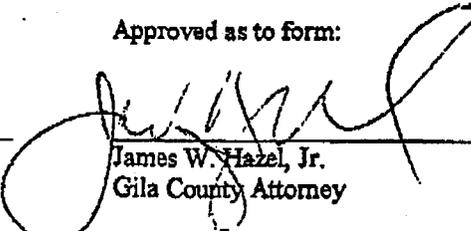

James W. Hazel, Jr.
Gila County Attorney

Exhibit A

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

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Exhibit B

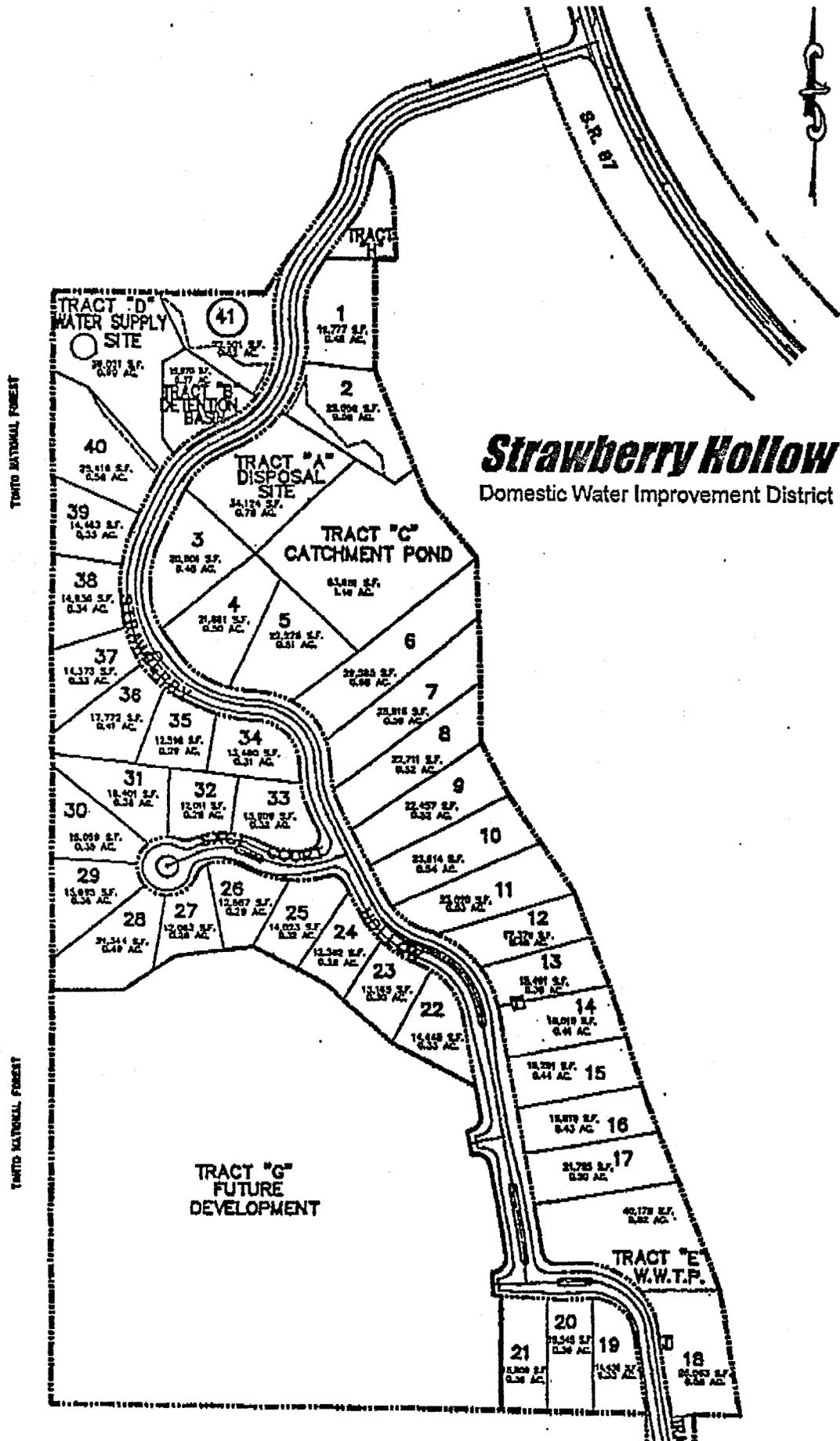


Exhibit C

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

AUG-17-2001

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12:28 GILA COUNTY SUPERVISORS

P.11/13

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.

Exhibit B

