

ORIGINAL



0000081231

January 20, 2008

RECEIVED

28

Arizona Corporation Commission 2008 JAN 25 A 9:41

From: Steve P. Prahin  
HC 7 Box 452  
Payson, AZ 85541

AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of Steve Prahin VS Payson Water Company Docket #W-03514A-07-0386

Response to Motion to Dismiss for Failure to State Claim File 1-11-2008

It's become apparent to me that the counsel for Payson Water Company must have been at a separate conference then the one that I was at on October 16, 2007. In regards to relief I stated what staff had recommended in emails 50,000 gallons of storage and a deep well aquifer. When asked by Judge Nodes about a public meeting I agreed and I stated I would rather work this out without spending another two years in court and tying up the ACC in this matter.

Shapiro-counsel for BUI seems to be truth stricken, he states Brookes held a meeting on November 10, 2007, nothing could be further from the truth. Three key residents of this community spent hundreds of dollars to personally prepare to hold that meeting, again to do Brookes job, because Brookes is still discriminatory in notification practices.

When a complaint is filed with as many allegations as I presented with the company denying them all, when they had already admitted to some of the same allegations in a response to another complaint. Is it not common sense to expect that relief would come in the way of proper maintenance and a competent water operator on the system. Not one that hands keys to an already failing system to residents to fend for themselves.

I'm not going to bother getting into Mr. Shapiro's melee mouth attacks on me. But what I am going to do is remind all parties involved in Docket #W-03514A-05-0352, I brought to light it was clear to me the Constitution of the United States was being stepped on. At that time in the same proceedings acting chair of the Commission, Hatch Miller, commented to the fact that the Arizona Constitution was being jeopardized.

Here we are three years later and still going on. In Docket #W-03514A-05-0352 a letter was entered by the rightful owners of the water infrastructure in question dated October 4, 2005, that was the evidence I needed to prove the 5<sup>th</sup> Amendment was being stomped on. I will take the time to quote the last four lines of the constitution that I and others have fought and died for. As one who literally fought for my constitutional rights, I stand firm on them as any governing body should. And I quote the 5<sup>th</sup> Amendment reads "no one shall be deprived of liberty or property without due process of law. "Nor shall private property be taken for public use without just compensation."

Arizona Corporation Commission  
DOCKETED

JAN 25 2008

DOCKETED BY	1	nr
-------------	---	----

Taking the water system from Mark and Judy Boroski in about 1990 without compensation is illegal, and it is disappointing the Commission will not correct the situation, especially when four of the ten years of non-payment have occurred during the Brook Utility ownership.

Being Mr. Shapiro wants to recite law here are some of the legalities in question:

1. 5<sup>th</sup> Amendment being broken.
2. Brookes trespasses on private land where he holds no deed, titles or PUE's to do so.
3. Holds no PUE to convey water within Elusive Acres boundaries.
4. Arizona 10 year egress easement law does not apply due to the fact this unjustifiable action was protested in the very beginning with BUI's predecessor and through the years right up to the letter filed in 2005. (See attachment 1).
5. Elusive well tap to connect Geronimo Estates to Elusive Acres Well. No Governing Body has been able to produce the proper permits allowing this to happen.
6. Illegal tap crosses private land with no egress, no easement and without just compensation.
7. No ADEQ monitoring devise in place to monitor water between Elusive Acres infrastructure and Geronimo Estates infrastructure.
8. No shut off valves every 1000 feet as required by ADEQ in residential areas.
- 9 Elusive Acre Well serving more than the 30 lots it was approved for in 1986.

These are just a few of the legalities. . At this time I find it necessary to take this to a higher level, after several conversations with the Boroski's the legal title holders of the property in question, they have agreed to sign titles, deeds and PUE's to me and the other 24 property owners of Elusive Acres, as should be, as these parcels are on all of our deeds and titles.

Because of multiply ownership Elusive Acres has only 25 property owners, with two full time residents. According to law we need a district, we definitely don't need Brookes Utilities. Being there will never be more than 25 full time residents we can operate our well obviously we are capable, or Brooke's operator would not have given us the keys to do such on the busy holiday of the year,.

It is a shame that staff itself testified to the fact they take BUI's reports for face value. After they themselves have withdrawn reports and recommendations because they themselves found that Brooke's provided false information on numerous occasions. But yet the people in the Rim Country Communities suffer the consequences of poor decisions made on false information.

With that being said I would hope the Commission staff and legal take a good look at what is going on in this situation before you consider dismissing this case.

The relief I am after now is the Elusive Acres Well be turned back over to the rightful owners, the predecessor of BUI never honored rules put on the unjustifiable taking of private land. Williams was ordered under this transaction to compensate the Boroski's, this never happened. Nor has BUI as of the writing of this letter ever tried to do the right thing. Commissioner Mundell, may have said it best "Why is it, it seems we have to drag BUI kicking and screaming to do the right thing?"

Is one to believe the Arizona Department of Real Estate, who approves subdivision development it's apparent that their decision mean nothing. When Elusive Acres well was approved it was only approved for the 30 lots of Elusive Acres, but continues to supply water for about 73 homes outside of Elusive Acres boundaries. Is one to believe that the governing agencies recommendations can be ignored by out of state entities, this is appalling to me.

Respectfully

  
Steve P. Prahin

Arizona Corporation Commission-Docket Control (original & 13 copies)

CC: Brooke Utilities, Inc./Payson Water Company (1 copy)

Gliege Law Offices (1 copy)

Attorney General-Terry Goddard (1 copy)

Mark and Judy Boroski  
4884 West River Road  
Wakeman, OH 44889  
Phone and Fax: 440-839-2249

October 4, 2005

Docket Control	Chairman Jeff Hatch-Miller
Commissioner Marc Spitzer	Assistant Chief Administrative Law Judge Nodes
Commissioner William A. Mundell	Assistant Director Steven Olea
Commissioner Kristine Mayes	Utilities Engineer Marlin Scott, Jr.
Commissioner Mike Gleason	

of the Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

RE: Docket NO. W-03514A-0352 Payson Water Co. at Geronimo Estates

Dear Commissioners and Staff:

By reference from several property owners, we have asked Joe Brown to introduce this letter into the proceedings of the above referenced Docket related to water issues in the Elusive Acres and Geronimo Estate area north of Payson, Arizona. Unfortunately, we are unable to appear in person at your scheduled hearing on October 18-19.

As the developers of the subdivision and former owners of the water infrastructure at Elusive Acres (next to Geronimo Estates), we continue to have an interest in the water situation in that area. We continue to hold title to the land on which the well and the storage tank are located, and we continue to have water line easements in our name for the 30 lot Elusive Acres Subdivision.

It is common knowledge in Arizona that water is a critical issue. Therefore, in planning phases and obtaining approvals from all local and state authorities we were extremely animate to provide a sound private water system to serve the potential homeowners in our 30 lot subdivision.

At the time of the original development, we sought to hook on to the Geronimo Estates water system, but we were told by Rich Williamson that a moratorium existed on new water connections. He informed us that we would need to build our own system if we wanted water. Thus, we did just that by developing an economical well, 15 thousand gallon storage and pressure system and a distribution system.

Because of absence of a not yet formed home owners association and very aggressive behavior on the part of United Utilities (predecessor to Brooke Utilities), we lost the \$150,000 water system, with no financial rewards, when eminent domain proceedings were instituted

and the ACC ordered the system (not land) given to United Utilities (Williamson Water Works) with no compensation paid. Because of (1) this dispute, (2) the fact we invested most of our resources in the water system, and (3) the fact we needed to move to Ohio because of family concerns, we left the area and did not have the financial resources to fight this unjust acquisition of our water system.

However, we still have a legal interest in this situation. Over the last 16 years, we have continued to pay the property taxes assessed by Gila County on both the well site and the tank site (see attached bills), and we have received, but not paid, the homeowner association bills issued by the Geronimo Estates HOA (apparently voluntary dues for something we are not part of). Until some time after we moved to Ohio, we did not realize that the United Utilities people without notifying us, the ACC, or for that matter any party that may have suggested proper legal protocol, unjustifiably had tied our good well (again approved exclusively for our 30 lot project), into the Geronimo system that lacked any significant water resources to serve the 220+ lots in that development. May it also be duly noted that this inappropriate tap and extension traverses private property in Elusive Acres with no legal easement awarded to do so.

In light of the situation, to fairly treat our property buyers and friends in Elusive Acres and our good neighbors in Geronimo Estates, we respectfully request that the Commission (1) allow all lots owners in Elusive Acres immediate water connections per the approved terms we had with the State Real Estate Department, (2) require Payson Water Co. to pay us a minimal, but fair sum for our properties, either in the form of monthly rents or outright purchase of the land, or for the value of the water being removed from our property, (3) require Payson Water Co. to develop adequate new resources to get rid of the 24 year old moratorium in effect in Geronimo Estates, that has also been improperly applied to Elusive Acres, and (4) require Payson Water Co. or your Document Control Center to send us (a) any documentation that reflects the authorization that seemingly brought Elusive Acres into the exclusive service area of United Utilities, and (b) that allowed the two water systems to be combined.

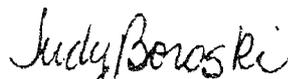
Our hearts are still in Elusive Acres, and we wish to see the water from our well used to properly serve the parcels we ultimately sold at distress values because of our loss of control over the water. Again, we believe the ACC should require Brooke Utilities to develop other water to cover the water short fall required to supplement any excess water from Elusive Acres that we agree should continue to be used to meet the needs of Geronimo Estates.

Please let us know what we can do to correct this situation, especially for the benefit of those who we were forced to walk away from over 10 years ago. We look forward to receiving any supposed documentation that reflects the authorizations that seemingly brought Elusive Acres into the exclusive service area of United Utilities, and that also allowed the two water systems to be combined.

Thank you. Please call or write us related to any questions you may have.



Mark Boroski



Judy Boroski