

ORIGINAL

OPEN MEETING AGENDA ITEM



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2008 DEC 11 A 9:53
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

8
9 **IN THE MATTER OF THE APPLICATION**
10 **OF PINE WATER COMPANY FOR**
11 **APPROVAL TO (1) ENCUMBER A PART**
12 **OF ITS PLANT AND SYSTEM PURSUANT**
13 **TO A.R.S. §40-285(A); AND (2) ISSUE**
14 **EVIDENCE OF INDEBTEDNESS**
15 **PURSUANT TO A.R.S. §40-302(A).**

DOCKET NO. W-03512A-07-0362
REPORT TO THE ARIZONA
CORPORATION COMMISSION
REGARDING ACQUISITION OF PINE AND
STRAWBERRY WATER COMPANIES BY
THE PINE STRAWBERRY WATER
IMPROVEMENT DISTRICT

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18 COMES NOW Fred B. Krafczyk & Michael Greer and the Pine Strawberry Water Improvement
19 District, by and through their attorney undersigned and submits the following report to the Arizona
20 Corporation Commission regarding the progress being made towards the acquisition of the Pine Water
21 Company and the Strawberry Water Company by the Pine Strawberry Water Improvement District
22 {hereinafter "PSWID"}. To date the PSWID has done the following:

- 23 1. On November 13, 2008 the PSWID filed a condemnation action in the Superior Court of the
24 State of Arizona in and for the County of Gila to acquire the Assets of the Pine and
25 Strawberry Water Companies;
26 2. Answered and is actively participating in the Arbitration action brought by Pine Water
27 Company concerning the Joint Well Development Agreement which is the central issue of
28 the above-captioned proceeding.
29

- 1 3. Filed an Application to have the Certificates of Convenience and Necessity of Pine and
2 Strawberry Water Companies revoked because of the failure of those companies to provide
3 adequate service to the public
- 4 4. Engaged the services of Stone and Youngberg as Financial Advisor and is proceeding with
5 acquiring the funds necessary to purchase the assets of the Pine Water Company and the
6 Strawberry Water Company.
- 7 5. Filed an application for funding with the Water Infrastructure Financing Authority (WIFA)
8 of the State of Arizona.
- 9 6. Engaged the services of an interim District Manager to assist with the establishment of the
10 operations of the PSWID necessary to engage in the operation of a public water system.

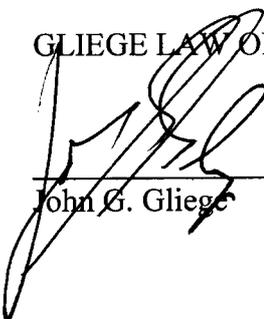
11
12 The PSWID has been hindered in its efforts by the actions of Pine Water Company, Strawberry
13 Water Company and Brookes Utilities, Inc such as:

- 14 1. Having Pine Water Company's attorneys file a letter with the Water Infrastructure Financing
15 Authority setting forth the arguments why the PSWID should not be eligible for funding from
16 WIFA and not providing any indication or copy of the same to the attorney for PSWID {see
17 attached letter from Todd Wiley to WIFA dated November 17, 2008}.
- 18 2. Pine Water Company proceeds with the arbitration it has brought concerning the underlying
19 agreement and demanding PSWID loan it \$300,000 without the approval of the Arizona
20 Corporation Commission which redirects PSWID resources which could be used to acquire
21 the Water Companies to other purposes. Pine Water Company is likewise incurring
22 additional legal expenses in its continued fight with PSWID. Further, Pine Water Company
23 is increasing its own expenses which it may in the future try to or desire to pass on to the
24 ratepayers in the Pine Water Company.
- 25 3. Categorizing the condemnation as acrimonious litigation and resisting the same, this will
26 necessitate in the expenditure of a considerable amount of PSWID resources which could be
27 applied to the purchase price of the Water Companies.

1 4. Making repeated demands upon PSWID for inspection of public records resulting in PSWID
2 having to redirect resources to the resolving of the unreasonable demands which could be
3 used instead to purchase the Water Companies.

4 RESPECTFULLY SUBMITTED this 9th day of December, 2008.

5
6 GLIEGE LAW OFFICES, PLLC

7
8 
9 _____
10 John G. Gliege

11 Original and thirteen copies of the foregoing
12 Mailed this 9th day of December, 2008 to:

13 Docket Control Center
14 Arizona Corporation Commission
15 1200 W. Washington Street
16 Phoenix, AZ 85007

17 Copies of the foregoing
18 Mailed this 9th day of December, 2008 to:

19 Fennemore Craig, P.C.
20 Attn: Mr. Jay L. Shapiro
21 3003 North Central Ave. Ste 2600
22 Phoenix, AZ 85012-2913
23 Attorneys for Pine Water Company

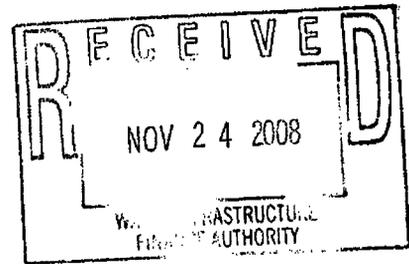
24 Honorable Dwight D. Nodes
25 Assistant Chief Administrative Law Judge
26 Arizona Corporation Commission
27 1200 W. Washington Street
28 Phoenix, AZ 85007

29 Mr. Kevin Torrey, Esq.
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

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November 17, 2008

COPY

Ms. Judy Navarette
Executive Director
Water Infrastructure Finance Authority
1110 West Washington, Suite 290
Phoenix, AZ 85007

**Re: *Water Infrastructure Finance Authority of Arizona (WIFA) Project
Financial Assistance Priority List Application filed by the Pine
Strawberry Water Improvement District***

Dear Ms. Navrette:

My firm, Fennemore Craig, represents Pine Water Company ("PWCo"), Strawberry Water Company ("SWCo") and Brooke Utilities ("BUI"), which is the sole shareholder of PWCo and SWCo, in regulatory matters and contract dealings involving the Pine Strawberry Water Improvement District ("District"). We also represent PWCo, SWCo and BUI relating to the District's condemnation of the assets of PWCo and SWCo and certain assets of BUI. Recently, counsel for the District (John Gliège) provided us with an electronic copy of the WIFA Project Financial Assistance Prior List Application No. DW-020-2009 submitted by the District on or about October 15, 2008. As stated in that application, the District seeks financial assistance from WIFA to "Acquire Pine and Strawberry Water Systems." Application at § 2.1.

As my partner Jay L. Shapiro informed you earlier this week, after reviewing the WIFA application filed by the District, we wish to provide this letter on behalf of our clients in order to advise WIFA of certain factual errors and omissions contained in the application. We believe it is important for WIFA to have a full and complete record in considering the finance application filed by the District.

To start, the stated purpose of the District's application is to obtain financial assistance to "Acquire [the] Pine and Strawberry Water Systems." Application at § 2.1. Unfortunately, however, the District has failed to advise WIFA that the District does not have an agreement with PWCo, SWCo or BUI regarding acquisition. Rather, the proposed acquisition involves the

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hostile takeover of PWCo and SWCo, as evidenced by the District's recently filed complaint in the Gila County Superior Court, Case No. CV 2008 375. Prior to filing for condemnation, the District offered to acquire the assets of both companies and unidentified assets of BUI for the purchase price of \$2,538,000. Our clients believe these assets are worth substantially more money, perhaps as much as \$6,000,000. Accordingly, our clients have advised the District that its offer was substantially below market value. The recently filed complaint, which will be contested by PWCo, SWCo and BUI, resulted. We believe it is important for WIFA to know that the District will be involved in contested and costly litigation with PWCo, SWCo and BUI relating to the hostile acquisition of the companies' assets.

According to the application, the District is seeking a construction loan from WIFA for \$4,500,000. Application at § 2.2. On October 14, 2008, the District published a report from its economic consultant, Economists.com. That report is available on the District's website (www.pswid.org) and describes the District's intended uses for that \$4,500,000. Specifically, "[i]t is forecast to enable the utilities to fund purchase price debt of \$2,538,000 and initial capital improvements of approximately \$2,000,000." See 10/14/2008 report from Economists.com at 8. As stated in that report, the District's "acquisition project" is based on an assumed purchase price of \$2,538,000. Again, this price is contested by PWCo, SWCo and BUI.

Given that the value of the companies is disputed, it is possible that the bulk of any financing from WIFA could be used by the District to fund its litigation proceedings against our clients and to pay the condemnation judgment in the event that a judge or jury decides that the value of PWCo's, SWCo's and BUI's assets is higher than \$2,538,000, with little money left over for construction of any capital improvements. The District's 10/15/2008 report acknowledges that possibility: **"if [the District] agrees to pay significantly more than \$2,538,000 to acquire the companies and wells, then either immediate rate adjustments will be required or fewer initial capital improvements can be funded under the existing rate structure."** See 10/14/2008 report from Economists.com at 8 (bold in original).

The District's WIFA application also contains a number of factual errors and incorrect allegations relating to PWCo, SWCo and BUI. In §2.3 of the application, the District alleges that BUI has a "record of poor customer service, lack of system maintenance, inadequate water supply (water hauling has been required on a seasonal basis)." See Application DW-020-2009 at §2.3. We wanted to advise WIFA that these allegations by the District are not accurate. For example, the District's claims that the Pine and Strawberry water systems are poorly maintained are belied by the fact that PWCo and SWCo have experienced less than ten percent water loss, which is within industry standards. Further, PWCo has implemented water hauling only in two of the last five years.

Similarly, the District's allegation that "the system owner has stated under oath that he does not have any plan for upgrading or improving the system" (Application DW-020-2009 at § 2.3) is patently false. We presume that the District is referring to Robert Hardcastle, the

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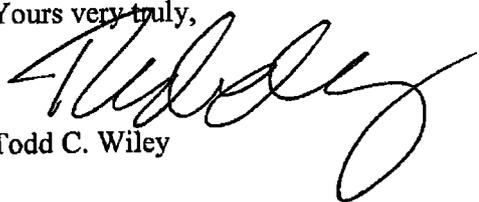
President of BUI, SWCo and PWCo. Mr. Hardcastle has not testified that BUI does not have any plans to improve the Pine and Strawberry water systems.

Not only did Mr. Hardcastle not make such statement, but PWCo and the District entered a Joint Well Development Agreement (JWDA) dated May 1, 2007. The purpose of the JWDA was for PWCo and the District to jointly develop additional water sources for use in Pine and Strawberry by constructing the K2 well project. Under the JWDA, the District agreed to contribute money towards initial development of a test well, with PWCo obligated ultimately to fund and develop a production well. Unfortunately, however, the District has refused to perform its obligations under the JWDA. Instead, the District has attempted to terminate the K2 project. Thus, although the District claims that BUI is unwilling to improve the Pine and Strawberry water systems, it is the District that has refused to perform the JWDA with PWCo. On that point, WIFA should be aware that PWCo and the District currently are engaged in arbitration proceedings to resolve the contractual dispute between them, including PWCo's claim for specific performance of the JWDA.

Ultimately, because the District has applied for financing from WIFA to fund the District's proposed acquisition of the assets of PWCo and SWCo, and certain as yet unidentified assets of BUI through condemnation, we believe it's important for WIFA to hear from our clients so that it can consider the full and complete factual record behind the District's application.

We appreciate your professional consideration of this letter and, if you need any additional information, please let us know.

Yours very truly,


Todd C. Wiley

TCWI/mlh

cc: Robert Hardcastle

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