

**BOARD OF SUPERVISORS MINUTES
GILA COUNTY, ARIZONA**

Date: July 21, 2009

SHIRLEY L. DAWSON

Chairman

STEVEN L. BESICH

Clerk of the Board

TOMMIE C. MARTIN

Vice-Chairman

By: Marilyn Brewer
Deputy Clerk

MICHAEL A. PASTOR

Member

Conference Room
Star Valley, Arizona

PRESENT: Shirley L. Dawson, Chairman; Tommie C. Martin, Vice-Chairman; Michael A. Pastor, Supervisor; Jacque Griffin, County Manager/Clerk; Marian Sheppard, Chief Deputy Clerk (via video conferencing); Marilyn Brewer, Deputy Clerk (via video conferencing) and Bryan Chambers, Chief Deputy County Attorney (via video conferencing).

Item 1 – Call to Order – Pledge of Allegiance – Invocation

The Gila County Board of Supervisors met in a Work Session at 2:00 p.m. this date in the Gila County Road Maintenance Yard Conference Room in Star Valley. Supervisor Pastor led the Pledge of Allegiance and Reverend Ken Lentz of the Mt. Cross Lutheran Church of Payson delivered the invocation.

Chairman Dawson welcomed everyone to the meeting. She stated that water is an important issue throughout Gila County, not just north of Roosevelt Dam and the Board was present to find answers and be informed about all concerns. She cautioned those attending to not be disrespectful to anyone, but to appreciate each other's concerns. She then called on Kenny Evans, Mayor of the Town of Payson, to speak first.

Item 2 - Information/ Discussion regarding the status of Blue Ridge/C.C. Cragin water.

Kenny Evans, Mayor of the Town of Payson, stated that he was requested to speak specifically about the Blue Ridge/C.C. Cragin water project status to date. Salt River Project (SRP) has completed the transfer of the project, which was originally developed by Phelps Dodge in 1963 as part of its agreement that allowed Colorado River water to be used to supplement the Verde system. C. C. Cragin is a dam along Clear Creek, which is a tributary of the Little Colorado, which is a tributary of the Colorado River. The agreement stated that in the event Phelps Dodge ever relinquished its right to the water, it had to revert to SRP. SRP, as a part of that agreement had to convey the physical

property, the dam and the reservoir to the U. S. Department of the Interior, Bureau of Reclamation (Bureau), and that transfer has been completed. SRP owns the first 10 miles of the pipeline and all the pertinent structures, pumps, equipment, generators, telephone and electric lines. SRP is approximately two-thirds through the completion of the repairs to the pumps, pipeline and generators costing \$15 million in repairs to date with \$8 million of additional repairs needed. The Bureau has completed an integrity check. SRP now owns 11,000+ acre feet of water and through a “settle and transfer” process, the Town of Payson (Payson) has now received title for 3,500 acre feet of the water from the Arizona Department of Water Resources. To date, Payson has paid 27% of the completed repairs, at a cost of \$7.5 to \$10 million, and is now beginning the NEPA (National Environmental Policy Act) process in order to do an environmental assessment and/or environmental impact statement at a cost of \$169,000 paid to the U.S. Forest Service. To date, Payson has been awarded a \$10.5 million stimulus grant through the WIFA (Water Infrastructure and Finance Authority) of Arizona, which required Payson to identify American Pipe Manufacturers which will supply the 75,000 feet of additional 18” pipe that is required to come down off the rim. Meetings have been held with entities that could have a beneficial interest in acquiring additional water from this source including the Town of Star Valley (Star Valley) and the Tonto Apache Tribe. Mayor Evans provided the Board with a copy of the testimony he will be presenting before Congress relative to a conflict with the Coconino Forest Service over the development of this project. He explained what the mandatory requirements are in order to have a right to be able to use the C.C. Cragin water, which included the following: It is mandatory to have a contract with SRP; you must be a legal entity and have a statutory right to hold title to that water and then to supply that water to those that need it; you must ensure that there is an allocation available and there must be deliverable water; you must contract with Payson for delivery through the additional 14.5 miles of pipeline that Payson is constructing at its own cost and for the treatment plants also being constructed by Payson for treatment of that water; you have to be able to withstand court challenges that almost inevitably will come; and you must have the ability to beneficially use that water within 5 years. Each Board member thanked Mayor Evans for his presentation and the handouts.

Item 3 - Information/Discussion regarding the status of Star Valley water issues.

Vern Leis, a member of the Star Valley Town Council, stated that Star Valley is different from some of the other cities and towns surrounding it. Star Valley is not a purveyor of water as there is no water that it actually owns. Star Valley owns one well and that well resides within a granted area that belongs to Brooke Utilities, so the only 2 sources of water are individual wells and Brooke Utilities. An LRF study was just finalized to assist in completing a master plan. It was conducted from the Star Valley/Payson city line to about the curve where the Ford car dealership is located and involved the metropolitan portion

of Star Valley, but did not include the Brooke Utilities portion or the other 25 square miles of incorporated city that has a population located on it. The study clearly indicated that under normal conditions, Star Valley does have an adequate water supply through the year 2020; however, that could change quickly with short- or long-term drought. Many of the Town of Payson's wells are located within the Star Valley confines and the Tower Well, which was the big discussion a few years ago, pulled 88 acre feet of water out of the aquifer last year and the prior year it pulled 159 acre feet. Referring to those draws, the population of Star Valley could almost double if it did not have these wells that currently draw water outside of its parameters. Star Valley does not own a water storage system or pipe for infrastructure; however, that is being studied for future consideration. With 1,097 parcels in the greater Star Valley area, sewer becomes the primary concern that is directly related to water because there is no processing plant and only 84 homes are on a processing system so the remaining homes are using septic systems. That could create a major water impact if something should occur with the water supply, which is quite possible with the aquifer because it's fractured granite rather than clay or sand. Because it is now known that there is an adequate water supply, the priority of Star Valley is to review the sewer systems and the possibility of having storage tanks for fire purposes. However, to provide a single 500,000 gallon water storage tank it will cost Star Valley approximately \$1.25 million. The C.C. Cragin project is not a viable possibility for Star Valley because it is not a purveyor of water and cannot qualify. Star Valley is also very concerned about its water supply, adequate sewer and adequate fire protection in order to bring in additional commercial businesses along Highway 260. Mr. Leis concluded by stating that Star Valley will continue to work on the best resolutions for the water future of Star Valley, be smart with its money and take it one step at a time. Instead of building a lot of waterways within the town, Star Valley will look at protecting its water supply through sewer development and additional fire protection. On behalf of the Board, Chairman Dawson thanked Mr. Leis for his presentation.

Item 4 – Information/Discussion regarding the status of Pine-Strawberry water issues.

Ray Pugel, a resident of Pine, stated that he was listed on the agenda as the person who would be presenting the status of the Pine-Strawberry water issues; however, after a few brief comments he would call on Harry Jones, District Manager of the Pine-Strawberry Water Improvement District (PSWID), to present the actual status. Mr. Pugel stated that he is getting used to being criticized from unsubstantiated and unsigned attacks on his character as well as others regarding the Pine-Strawberry water issues. He stated that based on inferences at public meetings, it appears that the Pine-Strawberry water issue may be coming to a conclusion, so any comments on that subject may be detrimental to the success of ongoing negotiations. He stated, "As Supervisors, you may lend support to communities in the counties who have experienced water problems. Even though you have no jurisdiction over independently

elected water districts, your aid and support is invaluable particularly in these economic times. It is hoped that you, Supervisor Martin, with the cooperation of the other 2 elected officials here will continue to help your constituents in other parts of northern Gila County who face the same unfortunate challenges that we have faced in Pine-Strawberry.” He briefly reviewed for the Board information on some of the communities that are facing water restrictions, outages and water meter moratoriums. In addressing the reason he was present at the meeting, Mr. Pugel stated that he had sent a letter to the members of the Board of Supervisors on June 30, 2009, requesting a one-on-one meeting with each supervisor so, as a constituent, he could present factual, historical and public domain documents, and not someone’s opinion, on the past history of northern Gila County water issues, particularly in Pine-Strawberry. He wanted it noted that he did not request to be placed on today’s agenda. “I speak for no one and represent no one other than myself and my wife...I hold no office. My appearance here would only be that of a layman and a concerned citizen. I did send an e-mail saying that I did not want to be here and saw no reason to be here. I sent 3 e-mails to suggest that the Chairman of the PSWID, Bill Haney, be invited to take my place as he is an elected official.” Mr. Pugel advised that he received an email reply to his email stating that he was the one who would be on the agenda for a 1 hour presentation so that’s the reason he is present at today’s meeting. He stated that unfortunately Mr. Haney had a business commitment so in his absence the PSWID Board has delegated Harry Jones to speak today. He reviewed some water issues in which Mr. Jones has been credited in saving residents thousands of dollars in water increases and has been instrumental in obtaining grants and noted that in his opinion Mr. Jones is, without a doubt, the foremost authority on the northern Gila County water situation and would now speak on behalf of PSWID as its representative.

Mr. Jones stated that over the years there has been a lack of accurate information as well as a lack of understanding regarding the water issues in Pine and Strawberry. He stated that hopefully the intent of today’s work session was to provide the Board with the big picture of what is going on as opposed to the various gossips, uninformed opinions and news stories of the day. He stated that Mr. Haney was concerned that if the status of the Pine-Strawberry water issues needed to be covered with the Board of Supervisors as some sort of intergovernmental matter, why wasn’t the entire elected PSWID Board invited to be here as it is the entity responsible for the kinds of issues listed on the agenda today? Mr. Jones stated, “Be that as it may, the PSWID Board is available to meet jointly with the supervisors at any time that you would like to arrange a convenient time.” Mr. Jones stated that he was here to speak on behalf of the PSWID Board since it was obvious there were other speakers noted on the agenda who would also be speaking on the Pine-Strawberry water issues. He was here “to get the facts on the table so we all understand where we’ve come from, where we are today and where we might be able to go in the future.” He also noted that the Pine-Strawberry water situation should not be separated from the remainder of northern Gila County

because the geology has a lot of similarities and the problems faced by other communities are very similar to those in Pine-Strawberry. Mr. Jones advised that the factual basis regarding Pine-Strawberry water issues should come from official records of the District, official reports and testimony at the Arizona Corporation Commission (ACC), reports issued by the Arizona Department of Environmental Quality (ADEQ), reports issued by the Arizona Department of Water Resources (ADWR), reports issued by professional consultants and individuals who are familiar with the situation and have long-term reputations in the industry, along with factual information that has been included in past billings. Mr. Jones requested that after his presentation and those of others that he be allowed the opportunity to make follow-up comments prior to the end of the meeting. Mr. Jones stated that he is not on one side or the other regarding the current water issues facing Pine and Strawberry, but he was here to provide the real facts to all concerned parties. Inadequate water service and inadequate infrastructure in all parts of Pine and now in Strawberry have consistently been the cause of the problems, with the exception of 4 other water improvement districts that were formed during the 1990s. These 4 districts only supply about 10% of the water to the Pine-Strawberry communities and 3 of the 4 have fire control systems. Those 4 districts are Strawberry Hollow, Pine Creek Canyon, Solitude Trails, and the downtown district that has been there over 100 years and is known as the Pine Water Association Domestic Water Improvement District, which is the one without a fire control system. The other 3 districts can pump 1,000 gallons/hour for 2 hours, which is very important to the overall security of Pine and Strawberry. A second factor is that over the last 13 years there's been a public utility provider, which has been unable to significantly add to the available water resources or to maintain and replace a sub-standard distribution system that serves 3,100 customers and an additional 1,400 vacant lots between Pine and Strawberry that are already developed. A third factor is that the regulators including the ACC, which is there to control the monopoly that was set up to run the water system, and the ADWR, which is there to control the quality of the delivered water, have both been unable to successfully supervise, monitor, or regulate the monopolist that they put in place 13 years ago. Both regulators have been not been able to effectively carry out their statutory requirements to ensure the proper quality of water and the ability of the utility company to actually serve all the customers. So the overall process for managing water resources and the water itself in Pine and Strawberry is broken and the water service is inadequate. The evidence that these communities suffer from inadequate service includes water outages that occur regularly, severe usage restrictions and hauling of water, which by ACC definition is inadequate service. Mr. Jones presented examples of customers expecting \$20-30/month water bills that were being billed additional charges for water haulage of \$80-\$90/month. The bill for one customer, who produces ice for sale, went from \$1,800/month to an additional hauling bill of \$4,100 one month, \$3,900 the next month and then up to \$10,000/month, which is extremely high when that person is selling a wholesale bag of ice for \$1.80-\$1.90. Other evidence includes the fact that there is a long-standing moratorium on new water meters

and line extensions that have been in place for over 3 years. Now 4 parties that are inside the monopoly area have filed lawsuits with the ACC to allow them to exit the Certificate of Convenience and Necessity (CC&N) (monopoly license) in order to drill their own wells and serve their own needs. Of the 4 parties, 2 are still involved in the lawsuits and 2 have already exited and paid \$50,000 each to have a right to get outside of the CC&N so they can spend their own money to develop their own water resources. Also, there is a long-standing list of complaints on the same issues that are regularly filed with the ACC, ADEQ and the Board of Supervisors. The Board of Supervisors has received many complaints over the years and many of those complaints have come from the PSWID asking if there was something the Board could do to help. The Arizona Department of Real Estate has listed the Rim Country as having less than an adequate water supply. Also the judge who has handled most of the cases for the ACC that were related to water in the Rim Country has made a number of quotes related to the inadequate water supply. Mr. Jones read aloud several of the quotes the judge made during some of those hearings. So there is no debate about whether there is inadequate service. The next question Mr. Jones addressed was, "How has this situation been able to exist for so many years?" Mr. Jones believes this has gone on so long because the water operators have been able to perpetuate the myth that there is no more water to be found under Pine and Strawberry. Those statements made by company personnel and ADWR, for a lack of understanding, made some statements like that 15-20 years ago and concluded that there were inadequate water resources. However, in the last 3 years the Mogollon Rim Water Resources Management Study, which will be presented in the next few months, has gained a lot of information from the deep wells that have been built and developed in Pine and Strawberry. Based on those overall conclusions, it motivated the Strawberry Hollow Water Improvement District development in Pine to go ahead and drill a deep well there, which has since qualified for a 100-year water adequacy designation and there are only 2 of those designations in Gila County. Another reason is that the water providers have made the claim and created the myth that the ratepayers could not afford to pay for any significant improvements within the system. Therefore, that means it could be concluded that virtually no significant improvements need to be made to the system because no one can afford to pay for them. The next question Mr. Jones addressed was, "What's the evidence to support my conclusions that these statements by the water companies are really myths?" In terms of the myth that there is no water available, these 4 other water improvement districts have become successful water suppliers in the area. Plus there are 2 deep holes that have been drilled in the area, one of which is Solitude Trails that was developed in 1994-1995 and has a capacity to produce 10 times the needs of the District and 90% is used by Brooke Utilities to supply 14-22% of the total water used in Pine. Another one is the Pine Creek Canyon District that Mr. Jones represents which was developed in 1995-96 and has the capacity to supply 25% of Pine's water usage. Strawberry Hollow supplies 15-20% of all the water and that has a 100-year adequacy. The Pine Water Association has 100 years of experience in providing adequate service from its

surface water. There is a 1,790-foot deep hole that was drilled in Strawberry around 1999 by an alliance between Gila County, Arizona State Land Department, U. S. Forest Service and the PSWID. That deep hole motivated Strawberry Hollow to drill deep to the 1,400-foot level where water was found; however, because it was an exploratory hole there was no determination on the amount of water available. A final example given to show it is a myth that there is no water is the 1,045-foot deep well that was drilled on the Milk Ranch site in 2005-2006 and owned by the Ray Pugel and Robert Randall families where significant water was found at the 800-foot level and was drilled in the hopes of supplying water to the Pine-Strawberry areas. This well is under option to the PSWID and it has the right to acquire that well at an appraised value before December 31, 2009, if it can gain control of the distribution necessary to utilize that water. He then spoke on other myths that the consumers cannot afford increased water fees and noted all the costs incurred by consumers due to water problems. There were the massive hauling charges passed down to and paid by the consumers; property owners have had to pay property taxes to PSWID in an effort to find someone that would go out and help them solve their water resource and distribution problems; property owners have suffered from depressed property values on their lots/homes and from poor liquidity of their properties because people are scared of the water shortage; they have suffered from negative newscasts about the water shortages; property owners have suffered economically in terms of owning property, but being denied the use of that property due to water moratoriums and usage restrictions; there have been large fines assessed for using water at the wrong time against the prohibitions or the restricted use rules and regulations; there is an inability to use property for full-time residency due to these water problems; houses have gone into disrepair because people are unwilling to spend money on a property they can't utilize; owners are being forced to drill their own wells; private parcel owners of 5-6 acres have to be able to use their property, but have to spend \$250,000 plus legal fees in order to have water; and the purveyor of water with weak enforcement by the ACC has pushed the cost of water resource development off of the utility company and onto the private sector even though there are regulations that require the utility company to provide adequate resources. An example given by Mr. Jones was the Tonto Village Water District that received a warning from the ACC in 2005 to put a new well in place or consumers would have restricted water usages hours. The company that owns the water system there continued to request one-year extensions from the ACC until the well finally went on line in May of 2009. Mr. Jones reviewed the past history of some of the water districts that ended up having to be run by the Board of Supervisors, which included Rim Trail and PSWID. Mr. Jones briefly discussed the formation of the PSWID in 1996, which was formed to attempt to locate additional water resources for the communities; the Northern Gila County Water Plan Alliance was formed in 2000 to determine if a deep aquifer existed below Pine or Strawberry with the result of the borehole showing water at 1,400 feet; and Brooke Utilities, as project manager for Pine Water Company, constructed the Magnolia Pipeline, which was built to ship water from Strawberry down to Pine where shortages

and restrictions were most severe. Brooke Utilities, an unregulated company, completed the Magnolia Pipeline and placed the project on its books and then charged its regulated subsidiary, Pine Water Company, for use of the pipeline. When Brooke Utilities did that they marked it up 6.82 times and instead of charging \$33,000-\$34,000/year, they were charging \$175,000/year to rent the pipeline for their own subsidiary companies. This was brought to the attention of the ACC by the efforts of many residents who were involved in the process and the ACC forced the pipeline to be put back onto the subsidiary's books and forced \$533,000 to be paid back to the subsidiary company. In early 2000, the purveyors of water including the Town of Payson started aggressive demand management programs resulting in water shortages and created a lot of negative publicity for the area. However, the Town of Payson did this after it had extracted all the water within the Town and felt like it had fully developed all water resources. This is not what happened in Pine-Strawberry, however, because they were relying on the private sector and the individual property owners, which resulted in the Strawberry Hollow well being created. In the summer of 2003, the Mogollon Rim Water Resources Management Study (a joint venture of the Bureau of Reclamation, Gila County and the Town of Payson) was begun and Mr. Jones represented Gila County in that study for many years. That project is now coming to an end, but it was a very important study that helped decide what needed to be done in order to understand the long-term availability of water, the underground flows of water, where the cracks and fissures were and to know where the water was going. That study helped turn things around allowing additional steps to apply for monies from the Bureau of Reclamation. In reference to the PSWID Board in 2003, 5 of the 7 board members resigned and because a quorum could not be formed to conduct business, the Gila County Board of Supervisors chose to step in and act as the Board of Directors of the PSWID. They appointed the County Manager as the Administrator of the PSWID, who then engaged Mr. Jones to assist for the next 16 months. Other key items Mr. Jones mentioned that have occurred in the PSWID included the ACC hearings in 2003-2004 when Pine Water Company filed an application to raise basic rates 41% and to impose a \$10 charge per meter for 3 years for exploration of new water sources, a total rate increase of 71%. After 22 months, that was settled at an 11.8% increase. Mr. Jones suggested that the Board of Supervisors continue to help northern Gila County bring additional help to the communities that have not been helped thus far. He also reiterated that the PSWID Board was disappointed in how this meeting was handled in terms of who was invited to speak on behalf of the water issues in that area. The PSWID suggested that an intergovernmental meeting between the full membership of the Board of Supervisors and the PSWID Board would be appropriate at any time it could be arranged. He also noted that at this particular time, the PSWID Board is in the middle of what it considers the most important negotiations probably in 100 years in Pine and Strawberry and the PSWID Board wants to make sure that the activities of the Board of Supervisors or other groups do not disrupt those ongoing negotiations because the PSWID Board has the legal responsibility to take care of those situations. In conclusion, Mr. Jones stated that he is not on

any particular side, but rather “I am on the side of trying to provide meaningful history, trying to provide accurate facts, trying to provide other contacts and references that people need to have and I’m trying to maintain a level playing field for water issues and discussion of those issues.” Chairman Dawson stated, “Mr. Jones, I can tell you that I do agree with you on the issue that the County should not be running this water district and as long as I am on the Board, I will work hard to make sure the County stays out of individual water district problems. I disagree with you on the agenda of this meeting and being invited. None of these people other than Mr. Pugel and actually Mayor Rappaport, Mayor Evans and Mr. Schwalm were invited. Why? Because I’m getting tired of my e-mail being clogged up with problems, so when Mr. Pugel started talking, he did not want to meet publicly. I’m sorry. I believe that it’s the job of this Board to be very public and to let the public know what we are messing with or what we’re not messing with. And I understand that you have said and continue to say that you’ve been impartial in water issues, but it’s been hard to watch your testimony before the ACC and feel that you were unbiased. So with that I disagree with you.” She stated that Mr. Jones would be allowed an additional 15 minutes to speak again at the end of the meeting.

Item 5 – Information/Discussion regarding the status of Pine-Strawberry water issues.

Toni Sorel provided a handout to the Board, which was a copy of a PowerPoint presentation. She thanked the Board for the opportunity to present some of the Pine-Strawberry water issues to the Board and stated that they are representative of the silent majority of the residents of Pine and Strawberry. She gave a brief overview of those who would be speaking, a brief history of each speaker and what issues they would be presenting. The first speaker was Pamela Mason, a full-time resident of Pine. She presented information about the conflicting activities of Harry Jones, Water Consultant. From October 2003 until 2007, Harry Jones represented himself as a Gila County water consultant and testified on behalf of PSWID before the ACC in opposition to the rate increase sought by the Pine Water Company. Soon after the case came before the ACC, the Gila County Board of Supervisors took over the PSWID Board. The property owners and residents were not asked if they wished this intervention to take place or if the District should spend the tax dollars on such intervention. There were 2 property owners who did try to intervene and give testimony. In November 2003, an ACC spokesperson said she was surprised that the County stepped forward under the guise of the PSWID. In 9 months alone, the County paid Mr. Jones \$37,600 and the attorney, John Gliege, \$81,000 for the action at the ACC. The rate case was settled by the ACC with the ACC granting an 11.41% increase for the Pine Water Company. In other words, contrary to statements by Mr. Jones claiming victory, the result of the rate case was settled in favor of the Pine Water Company. At the same time, Ray Pugel was beginning a petition effort to take over Pine Water Company. Mr. Pugel also filed an ACC action to remove the Milk Ranch Well from Pine Water Company’s CC&N. Mr. Jones gave testimony supporting that

action as a consultant to Vice Chairman Martin of the Gila County Board of Supervisors. As a result of the ACC intervention and Mr. Pugel's petition effort, a group of property owners banded together under the name of "Citizens for an Adequate Water Supply" to defeat the petition and return control of the PSWID to the District's residents in Pine and Strawberry. This was a successful effort that resulted in the citizens' goal of being elected to the PSDWID Board in November 2004 and the petition effort ceased. Expense reports submitted to the County Manager from Mr. Jones in 2007 documented his continuing activities on behalf of special interests and against the newly-elected PSWID Board. Mr. Jones reviewed and corrected information published on the Rim Country website that promoted opposition to the K2 Well Agreement and the recall of the duly elected members of the PSWID Board. In a single expense account from June 1, 2007, through June 30, 2007, Mr. Jones claimed 51.3 hours spent on Pine-Strawberry water issues resulting in payment of over \$2,300.00. The majority of Mr. Jones' hours were spent on opposition to the K2 Well, support for the recall of 4 of the elected members of the PSWID and work to change the name of the District to a domestic water improvement district even though the expressly stated organization of the District was as a water improvement district as was specified by the Board of Supervisors and not a domestic water improvement district. Mr. Jones and Mr. Gliege both gave the opinion that there was no difference between a water improvement district and a domestic water improvement district even though Arizona Revised Statutes clearly state the difference and provide for actions to be taken to change a water improvement district to a domestic water improvement district. This opinion continues to be challenged. After Mr. Jones' action as a water consultant to the PSWID Board, a district that was facing bankruptcy, the PSWID is now committing to pay Mr. Jones a monthly retainer of \$2,040 for FY 2009-2010, which is a total of \$24,480/year and an additional \$40,000 for projected costs. This is in addition to the \$48,757 paid in FY 2008-2009. Those payments were for a consultant to solve the Pine-Strawberry water issues that are no closer to resolution now than they were when PSWID was formed in 1996. The PSWID Board offered and Mr. Jones accepted the position of PSWID Interim Manager of a non-existent water company with a guaranteed monthly retainer. What could Mr. Jones possibly offer the taxpayers of the District that is worth \$113,237 and is only a part-time effort? If Mr. Jones was truly representing the best interests of the District and Gila County, he would immediately decline the monthly retainer and consult only on specifically contracted issues at a rate of \$45/hour, the rate charged to Gila County. In this time of severe economic restriction these high costs to the taxpayer are inexcusable.

The next speaker was Bernice Winandy, also a resident of Pine. She presented information about the conflicting activities of John Gliege, PSWID attorney. Mr. Gliege has a conflicting and costly relationship with the Pine-Strawberry community. This conflicted relationship necessitated the inclusion of a waiver of conflict of interest in his contract with PSWID. A paragraph in the contract reads: "We shall also provide for the district waivers of any potential conflict of

interest which any of our prior or existing clients may have and likewise require the district to execute a waiver of any conflict of interest which may arise because of this office's representation of individuals in the Pine-Strawberry area." Mr. Gliege, while representing the PSWID, also represents Mr. Pugel in an action that is currently before the ACC regarding Mr. Pugel's Milk Ranch Well CC&N removal. In an effort by PSWID to acquire the Pine and Strawberry water companies with funding by the Compass Bank, according to the terms of the Compass Bank Loan commitment letter, the purchase of the Milk Ranch Well is necessary in order to get the loan commitment. So representing PSWID in the Milk Ranch purchase negotiations while simultaneously representing Mr. Pugel, the owner of the well, in another matter creates a conflict of interest for Mr. Gliege. Mr. Gliege represented Loren Peterson in resolving impediments to the development of Strawberry Hollow and he owns a deep well in Pine, which is also a potential water source of PSWID. Water sharing negotiations would put Mr. Gliege in the position of negotiating with an individual he has previously represented creating a conflict of interest. Mr. Gliege has represented Mark Fumusa in a matter against the Pine Water Company in an ACC rate case. Mr. Fumusa is a developer of Solitude Trails and is the owner of a well that is currently supplying water to the Pine Water Company. Water sharing negotiations again puts Mr. Gliege in the position of negotiating with an individual he has represented creating a conflict of interest for Mr. Gliege. In 2007 Pine Water Company/Brooke Utilities and PSWID executed a joint well agreement known as the K2 Well Agreement. Mr. Gliege has acted as attorney for interveners in the K2 Well ACC Case who wanted to stop the joint well agreement and negate the action of the duly elected PSWID Board. So Mr. Gliege was working against duly elected members of the PSWID, which is the same PSWID that he now represents. Another complication to the K2 Well, which could prove to be quite costly to the community, is that Pine Water Company has retained the right to bring an action against PSWID for breach of the K2 Well contract. Despite these conflicts and despite the objections of some members of the community, PSWID hired Mr. Gliege to represent the District in the combination action. The PSWID is spending very large amounts of money on Mr. Gliege's fees. From April 2008 to the present date, PSWID has paid Mr. Gliege \$270,000. For the first 4 months in 2009, Mr. Gliege billed PSWID at the average monthly rate of \$29,300. If Mr. Gliege's legal fees continue at the current monthly average for the rest of 2009, Mr. Gliege's fees could total \$500,000-\$650,000 for 21 months of legal representation. Legal fees of this huge size will create a very large financial burden for the small communities of Pine and Strawberry. In conclusion, Ms. Winandy stated that there are 2 words that aptly describe Mr. Gliege's relationship with the Pine-Strawberry community; it's costly and it's conflicted.

Sam Schwalm, a resident of Pine, spoke on some of the impacts on the District that Gila County has had in supporting a small group of developers and their efforts. The previous PSWID Board had negotiated an agreement with Brooke Utilities to fund a test well at the K2 site in Strawberry at a cost of \$1.3 million.

The PSWID would have put up \$300,000 to drill a test well to prove out the site and if sufficient water was found, Brooke Utilities would have repaid the \$300,000 and then spent an additional \$1 million to develop the well. That Board was subsequently recalled and the new Board has proceeded with condemnation to take control of the Pine Water Company and the Strawberry Water Company, which will be much more costly than the K2 Well agreement would have been--\$6.4 million versus \$1.3 million, plus \$750,000 or more of taxpayer money to complete the condemnation. This will result in significant water rate increases for the ratepayers. The legal staff of ACC, in a brief they filed on February 29, 2008, basically came to the same conclusion and that is "the arguments that are being advanced against the K2 agreement are to the benefit of a small group of developers, and against the overwhelming need of the public for more water." Another impact is that the lengthy condemnation litigation will delay additional water past the summer of 2010, whereas the K2 Well water would have been available in the summer of 2008. He also noted that there has been excessive unproductive spending by the PSWID Board. Through the end of June 2009, a total of \$420,000 was spent on legal fees-\$270,000; consultant fees-\$66,000; an interim general manager-\$49,000; and loan fees to Compass Bank in the amount of \$37,000. In the current budget for 2009-2010, \$380,000 has been budgeted, which represents an increase in the tax levy from \$90,000 last year to \$300,000 for this year and the current spend rate of \$35,000 a month translates to \$420,000 for the year so there is concern that the PSWID will run out of money before the end of the year. The budget does not include any money to cover the cost of sanctions or breach of contract, which is at Brooke Utilities' discretion to pursue. If the PSWID runs out of money before the end of the year before the litigation is over, then that will result in a field condemnation, which means all of the money spent to date will be flushed and on top of that PSWID will have to pay Brooke Utilities' legal fees related to the condemnation. One of the concerns is that the PSWID Board does not seem to be managing the risks they are creating. The PSWID was very close to bankruptcy in January and were looking at an arbitration hearing in February, so they were going to need to come up with \$100,000 in January. Fortunately, Brooke Utilities voluntarily released escrow funds of \$228,000 to plug that hole. Mr. Schwalm then reviewed a chart showing PSWID's spending history from April 2008 through May 2009. He stated that the latest activity related to the immediate possession of the 2 water companies owned by Brooke Utilities is that the PSWID pursued and agreed to provide a \$3.2 million deposit, which would provide them with immediate possession. That fell through because PSWID could not come up with the money. PSWID was negligent in not understanding that the loan commitment from Compass Bank did not cover immediate possession and the wording clearly stated that it was all dependent on a purchase agreement in order to close the loan. Also, one of the conditions in the Compass Bank commitment letter was that PSWID would have to purchase Mr. Pugel's Milk Ranch Well as a closing condition on the loan. That demonstrates that PSWID abdicated their authority in that area in that they are in the process of evaluating that well, they don't have a price for the well, they don't know the condition of the well and yet they are allowing

that condition in the commitment letter to force the PSWID to buy that well. PSWID also performed negligible due diligence by not planning what was needed to assume operation. The PSWID Board was also aware of the issue with Gary Rogers, who claims that he is the owner of property included in PSWID's condemnation lawsuit and had not agreed to the sale between Brooke Utilities and the PSWID, but the PSWID chose to ignore it. The PSWID has put the District at risk for future liabilities costing hundreds of thousands of dollars. Those liabilities include a breach of the K2 Well agreement, sanctions for failed immediate possession and cost of a failed condemnation either because PSWID will run out of money in the litigation or the jury will come back with a price they don't have a loan to cover. The PSWID Board has not really exercised proper fiduciary responsibility and does not represent the interests of the community as a whole by its following actions: 1) hiring a lawyer to represent the public, but who also represents several of the developers in the area; 2) failure to disclose the true cost of the condemnation and operation of the water system to the public; 3) creating legal and financial liability by breaching the K2 Well agreement; 4) negligent in failing to have financing before entering into an immediate possession agreement; 5) expensive unproductive spending; and 6) declaration of a domestic water improvement district without going through a formal process and without following statutes for conversion. Mr. Schwalm recommended that the Board of Supervisors should investigate and vote on whether Gila County should take control of the PSWID Board in order to protect the public. He also stated that taken as a whole, the actions of the PSWID represent a clear and growing threat to the solvency of the District. He stated that if the Board of Supervisors takes over the PSWID, it is recommended that the condemnation effort be stopped; work to address the legal/financial liabilities that have been created; and form a citizens' group to determine a path to a water solution. Mr. Schwalm stated that to avoid the reoccurrences of these issues in the future, Gila County should do the following: 1) establish rules that prevent using taxpayer money to undermine the actions of duly elected boards; 2) under no conditions should taxpayer money be allowed to support the recall of duly elected officials; 3) prohibit boards from waiving conflicts of interest in their legal and other hires; and 4) the Board of Supervisors should request presentations of plans and progress from boards that are taking actions which will result in significant changes or expenditures. These presentations should be public and allow for public comment. His final recommendation was to revise the water requirements for the County to avoid unsustainable development as follows: 1) pump testing of the wells should be required to be done in the summer and 2) eliminate the possibility that developments can be declared "seasonal" and be required to show only 135 gallons per lot per day instead of the regular 250 gallons per day.

Toni Sorel gave closing remarks on the social impact that the water issues are having on the communities of Pine and Strawberry creating an environment of distrust and animosity. She stated that the social impact of the community

could change with help and guidance and they would like the Board of Supervisors to play a very important facilitator role in that process.

Item 6 – Information/Discussion regarding water issues.

Chairman Dawson, on behalf of the Board, thanked the speakers for their presentations. She stated that the one sad thing in community conflicts is that it is only the consultants and attorneys who get wealthy out of the conflict. Chairman Dawson stated that she did not believe that Brooke Utilities was without problems. She recommended that the groups try to resolve the water issues by removing the attorneys and sitting down and reasonably talking about the goals and issues. If the Board of Supervisors can be of assistance in moving that effort forward, Chairman Dawson was sure there are people who would be willing to work with the communities on those efforts. She then called on Mr. Jones for his requested rebuttal. Mr. Pugel stated that he would like to make a few comments before Mr. Jones. Mr. Pugel stated that he wanted the record to be clear that he did not lead the petition drive; he did not know who did, but he did not participate in same. He also wanted to note that Attorney John Gliege does not represent him on the Milk Ranch Well and lastly, he did extend an option on the Milk Ranch Well to the PSWID Board which had requested it. He also requested a copy of any document showing that the PSWID must buy the Milk Ranch Well because that was news to him. Chairman Dawson also requested a copy of that document as well. Chairman Dawson stated that there were a couple of requests for public comment. She stated, "I have been the advocate on the Board for time for public comment; however, we are not going to take public comments because there's 100 of you with 100 different public comments and we could get into a little disagreement here. It is not necessary. There were spokespeople to my knowledge for all sides of this and as the agenda was posted, you will see there was not a 'Call to the Public.'" She then called on Mr. Jones to give his closing remarks. Mr. Jones began making inquiries of the audience about Attorney Gliege's fees and Chairman Dawson advised him that he had 10 minutes to speak to the Board and not to interrogate the audience. Mr. Jones stated that he believes that the types of questions that need to be looked at by the Board of Supervisors include the following: 1) Relationships of what is the cost of the attorney? 2) What is the startup, meaning up and ready and knowing all the players in the game? 3) What are Mr. Jones' costs compared to others; in terms of the K2 Well site? 4) Asking questions about a good legal access to the site - Were there any issues of condemnation of property or condemnation of easements on the property in order to make it work? He also recommended that the Board look at the backgrounds of all the consultants, rate analysts, appraisers, which he would be happy to provide including his own resume and that of Mr. Gliege. He also requested that the Board look at the resumes from the other folks who spoke as to their professionalism and experience in these issues as far as rate analysts and professionals in appraisals, etc. He also requested that the real cost of the K2 Well be reviewed and noted that the real cost for drilling a well would be a maximum of \$400,000, not \$1.3 million. He also addressed

Chairman Dawson's recommendation to meet without consultants and attorneys, and his response was that the PSWID chairman and vice-chairman did meet without consultants in terms of negotiations approximately 9-12 months ago and came out of the meeting insulted by the president of the company. They have since had several meetings that were publicly disclosed. In the last few weeks they met again and are making very reasonable progress. Mr. Jones concluded by suggesting that additional thought be given to those areas mentioned and "go from there." He thanked the Board for the opportunity to be on this program. Chairman Dawson thanked Mr. Jones for his presentation. She concluded the meeting by asking, "What is the purpose? Why are we here? The purpose was to hear your thoughts for both sides to publicly understand the thoughts, the concerns that are going on. I don't think there's anyone here that doesn't want to make their community a better place and see that water is running in Pine and Strawberry. There needs to be improvement in what exists and how do you go about getting that improvement? I believe you don't do it with attorneys. I'm glad for Mr. Jones to mention that you're trying to negotiate reasonably and I hope that will continue with positive results. I'm sad that you are facing another few months of water shortage. It's time that gets addressed and is taken care of. We can't do that for you. You can do it and I hope you will by working together. Thank you all for coming here today and good luck with your negotiations."

No action was taken by the Board on any of the items listed above.

There being no further business to come before the Board of Supervisors, Chairman Dawson adjourned the meeting at 4:10 p.m.

APPROVED:

Shirley L. Dawson, Chairman

ATTEST:

Steven L. Besich, County Manager/Clerk