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## MEMORANDUM

**TO:** Chairman Cory Ellsworth  
**FROM:** Steve Wene  
**DATE:** July 25, 2023  
**RE:** **Concerns Submitted on April 3, 2023**

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### PRELIMINARY STATEMENT

In late-March and early April of this year, a former board member brought forth more than 100 allegations and questions from dissidents in the community that either expressed or implied wrongdoing by the Pine-Strawberry Water Improvement District (“District”), its Board of Directors (“Board”), or specific Board members (also referred to as “Directors”). Most of these allegations focused on actions taken by three Board members: Former Chairman Headings, Director and Treasurer Hillman, and Director and Secretary Bagshaw.

When these complaints are considered together, the issues generally arise in matters where Board members have acted in lieu of a general manager. The District’s structure presumes a manager will receive and carry out directions from the Board. Without a manager, individual Directors have filled the void and acted in place of the manager in many instances.

The District Bylaws<sup>1</sup> complicate the matter. Generally speaking, bylaws are rules govern corporations, defining the roles of directors, officers, members, and staff. In a corporate structure, a board of directors functions similarly to the District's Board. Officers are responsible for the business' day-to-day operations. It is quite common for a corporate director to be a corporate officer and corporate officers, who are also corporate employees. In other words, in corporations directors are often both officers and employees involved in the business' day-to-day operations. In contrast, the District is not a corporation; it is a political subdivision of the state. The District and Board are governed by statutes, A.R.S. § 48-901, *et seq.* A.R.S. § 48-901 identifies a Board chairman and simply states the chairman presides over board meetings. The other "officers" mentioned in the statutes - treasurer, clerk, street superintendent, engineer – are employees, not board members.

Nevertheless, 23 years ago the District's founders set up a political subdivision but overlaid it with corporate-like bylaws in which Board members may function as a director, officer, and staff all at the same time. Attachment 1. This created a situation where on one hand the Bylaws authorize Directors to conduct day-to-day activities but on the other a statutory scheme in which Directors oversee the day-to-day activities unless expressly authorized by the Board to act. Of course, one could say that the Bylaws expressly authorize Board members to operate as staff essentially. But this argument can quickly devolve into a circular logic pattern and has caused much confusion in both the District and the community regarding the scope of work and responsibilities of Board members.

To resolve this problem, the District needs to fulfill the management position. The Board should consider hiring a general manager or hiring two managers – a field manager and an office

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<sup>1</sup> Bylaws of the Board of Directors for the Pine/Strawberry Water Improvement District (as Amended) (Mar. 16, 2000).

manager with clearly defined roles. This should alleviate most of the confusion and acts that have given rise to the concerns raised in the public. Thereafter, it is critical to revise the District's governing documents to make sure they are consistent with the applicable statutes.

## **ALLEGATIONS**

This analysis groups multiple accusations into a single allegation relating to the same complaint or action. More than 100 allegations were condensed into 13 sections presented below in no particular order. To be clear, the acts are viewed through a prism of legal or illegal, not good or bad. The District attorney is not the arbiter of disagreements, so this memorandum does not intend to pass subjective judgment over the acts of the District Directors, former Directors, staff, or customers. This memorandum therefore consolidates the accusations into a cohesive allegation, and then for each group of allegations this memorandum identifies the applicable rule, analyzes the matter, and finally offers a conclusion and suggestion for the Board.

### **1. Allegation - Director Hillman's Wrongfully Considered an Order of Protection.**

**1.1 Issue.** Did Director Hillman wrongfully pursue an order of protection that may have chilled the speech people raising concerns regarding her actions?

**1.2 Rule.** A.R.S. § 12-1809 authorizes a person to seek a court order preventing a person from committing acts of harassment against another. To issue an injunction against harassment, the judicial officer has to find evidence of harassment of the plaintiff by the defendant during the year preceding the filing or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted.

**1.3 Analysis.** In late March of 2023, following numerous, sometimes boisterous, complaints about her actions, Director Hillman contacted the Gila County Sheriff's Department

in order to determine if an order of protection was warranted. Director Hillman's position is that she has been the target of undue harassment and she is concerned for her safety based upon some comments made and aggressive actions by certain people. Based upon her conversations with the sheriff's deputy, however, she decided not pursue any action.

All people have the right to seek an order of protection under Arizona law, which may or may not be granted by a court. Like every other person, Director Hillman can file for an order of protection if she chooses, but she did not do so here. Further, there is no evidence that Director Hillman's actions chilled the speech of opponents criticizing her. In fact, the opposite is true; her potential pursuit of the protection order led to more criticisms by opponents.

**1.4 Conclusion and Suggested Action.** Director Hillman has the right to seek an order of protection, but decided against it. Accordingly, no District action is necessary.

## **2. Allegation - Director Hillman Improperly Handled Public Records Requests.**

**2.1 Issue.** Did Director Hillman improperly handle public records requests? This issue has two subparts: (i) were the responses timely, and (ii) was the procedure of gathering the documents, which Director participated, proper? In addition, did Director Hillman's working on public records requests constitute a conflict of interest?

**2.2 Rule.** The custodian of public records must respond to public records "promptly" in light of circumstances. A.R.S. § 39-121.01; *see W. Valley View, Inc. v. Maricopa County Sheriff's Office*, 201 Ariz. 225, 230 (1980). A conflict of interest occurs where a public official has a substantial interest in a public official's decision. *Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985). The term "substantial interest" means a financial or

proprietary interest by which a person may gain or lose something, as contrasted with a general sympathy or bias. *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

**2.3 Analysis.** Between December 12, 2022, and April 24, 2023, the District received 13 public records requests listed below:

<b>Request Date</b>	<b>Requestor</b>	<b>Records Requested Summary</b>	<b>Date Available</b>
12/12/2022	Jeffrey Buechner	Moratorium list	undated
1/6/2023	Rebecca Raines	Contracts with WIFA, USDA, et al.	undated
1/12/2023	Tom Reski	Policy on board member spending limits	undated
1/16/2023	Tom Reski	Service request for 4703 Pine Creek Canyon	undated
1/23/2023	Tom Reski	Invoices and checks re Wilson home claims	undated
1/28/2023	Tom Reski	January general ledger (asked to deliver after Feb. 20)	undated
2/27/2023	Tom Reski	February general ledger	undated
3/21/2023	Tom Reski	District employee data in 2022 and 2023	4/6/2023
3/27/2023	Tom Reski	Emails between Hillman and Headings during March 1-24	4/6/2023
3/30/2023	Beth Pierson	Correspondence regarding Wilson claim letter	4/6/2023
3/31/2023	Beth Pierson	Correspondence between Hillman & board members	4/18/2023
4/24/2023	Beth Pierson	Documents related to Hillman's employment	4/26/2023

The term prompt is subjective, but a rule of thumb is that a request for a specific document or just a few documents not archived should be made available within approximately 10 days. Meanwhile, if the request seeks multiple documents by category or a general description, then it may take 30-90 days to meet the request depending upon the amount of work and number of documents sought. If information has to be redacted, a reasonable response time can be even longer.

Here, the District's responses were prompt. Initially, District staff did not track response times, so exact date was not readily available. But once the public records requests seemed to become a continuing matter, staff took the initiative and began to document the date of the request and date the information became available. Redactions were necessary on multiple

documents and often District staff needed legal clarification regarding whether or not information could be made public because it was personal, such as employee salaries.

Comments also question why Director Hillman was involved in the public records requests process. First, many of the records sought are kept by Director Hillman. She is the treasurer and responsible for the general ledger. She was the primary District contact regarding the Wilson, WIFA, and USDA matters. Other requests specifically sought Director Hillman's emails, correspondence, and employment documents. In fact, 8 of the 13 requests specifically sought information directly overseen by or involving Director Hillman, which is the central reason she was involved in the process to gather the requested documents.

Further, most of the requested documents needed to be reviewed to determine if redaction was necessary. The District has a duty to redact confidential information prior to disclosing documents to the public. *Carlson v. Pima Cty.*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984). District staff did not feel comfortable determining the difference between private, confidential information and public information, so these requests were sent to the attorney for review. Director Hillman, along with the chairman and vice-chairman, are the Board members authorized to communicate and assign work to the attorney. Therefore, Director Hillman communicated with the attorney to address what information should be redacted before providing documents to the public.<sup>2</sup>

It is also reasonable to infer Director Hillman initially assumed responsibility for handling the public records requests because there was no manager to handle the matter. There have been very few public records requests in the past, and although there were forms for filing

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<sup>2</sup> Another allegation is that according to District staff, Director Hillman ignored legal advice regarding public records requests. As the attorney, I am unaware of Director Hillman ignoring legal advice. If a more detailed explanation is provided, this allegation may be reassessed with the permission of the District board.

public records requests, staff was unfamiliar with the process. There does not seem to be an official custodian of records, which is not surprising based upon the size of the District. However, in late March staff became comfortable with the process and Director Hillman's role in answering the requests was reduced effectively to providing the documents within her scope of work. In other words, District staff has now taken the lead on receiving and complying with public records requests and Director Hillman is no longer involved unless the records are within her purview.

The allegations also assert Director Hillman's involvement in the public records requests constitutes a conflict of interest. However, there is no evidence that Director Hillman somehow gained financially while working on these matters. The public records requests did ask for financial records, and while there are allegations that Director Hillman embezzled District funds, these allegations are unsupported. Without some credible showing of how Director Hillman has a financial interest involved in producing or not producing public records, it cannot be established that Director Hillman has a conflict of interest in the matter.

**2.4 Conclusion and Suggested Action.** Based upon the known facts, Director Hillman had no pecuniary interest in the public records requests and there was no conflict of interest when Director Hillman participated in the gathering, redacting, and disbursement of public records requested. The public records were provided in a timely fashion and the redactions were appropriate.

The problem here seems to be there is no custodian of records, no general manager, and no known scope of duties making someone responsible for answering public records requests. Director Hillman assumed this responsibility during the first few months, then this task transitioned to become a District staff responsibility in March 2023, which is appropriate.

Moving forward, the District office staff should continue to be responsible for answering public records requests.

**3.0 ALLEGATION - DIRECTOR HILLMAN DESTROYED PUBLIC RECORDS.**

**3.1 Issue.** Did Director Hillman destroy public records?

**3.2 Rule.** The District, its officers, and staff are required to maintain records to provide an accurate accounting of activities. A.R.S. § 39-121.01. This includes all books, papers, and other materials in hard copy or electronic form. *Id.*

**3.3 Analysis.** First, allegations contend Director Hillman deleted emails she sent to Ray Headings that were subject to a public records request. In cooperation with the District's technology associates, the emails sent to and from Ray Headings' account on the pertinent dates were retrieved and reviewed. According to the technology associates, there was no evidence showing Director Hillman deleted any emails sent to then-Chairman Headings.

Second, allegations contend Director Hillman ordered District employees to destroy two computer hard drives in 2022. The hard drives in question were from the old server that was replaced 2019 approximately. The hard drives were not destroyed. They remain in a District file cabinet. Director Hillman does not dispute that she sought to have the hard drives destroyed, but she understands that the information on the hard drives was previously retained on other computer servers. Her rationale for wanting to destroy the hard drives was that the hard drives are no longer used and she did not want the information on those hard drives being wrongfully released. The technology consultants confirmed the information on those hard drives was transferred to the new server. The information on the new server is backed up routinely and has two hard drives to create redundant files.



**3.4 Conclusion and Suggested Action.** There is no evidence that Director Hillman deleted or destroyed District records and both she and staff understand District information must be maintained. Thus, no corrective District action is necessary.

**4.0 ALLEGATION – DIRECTOR HILLMAN UNILATERALLY CHANGED THE TERMS OF THE MCKNIGHT PURCHASE AGREEMENT.**

**4.1 Issue.** Did Director Hillman unilaterally and improperly change the terms of the McKnight property purchase agreement?

**4.2 Rule.** The power to acquire real property resides with the Board. *See* A.R.S. § 48-909.B.1.

**4.3 Analysis.** On October 11, 2022, the McKnight family agreed to sell the property to the District for \$475,000 provided the District paid all of the closing costs. Attachment 2. On October 13, 2022, the District board of directors approved the purchase for \$475,000. Attachment 3. After the purchase agreement was tendered to the McKnight family, they requested the agreement to expressly state the District would (i) pay all closing costs; (ii) pay the second half of the property taxes; and (iii) accept the property “as is”. Attachment 4. The added language was “The District will also cover all costs related to this sale including the second half property tax in the amount of \$1,182.52. This purchase is ‘as is condition’ of the Property including Land, Buildings and Well.” Attachment 5.

Director Hillman did not act unilaterally. Then-Chairman Headings, Director Reski, and Attorney Wene were included in the correspondence requesting to add language to the agreement. *See* Attachment 4.3.3. Ms. Baker, who was communicating on behalf of the sellers, also included these same people in replies. Before adding the language to the agreement as the McKnight’s requested, Director Hillman consulted Attorney Wene.

Expressly stating the terms requested by the McKnights did not require additional Board approval because the board already understood and accepted those terms. The Board authorized Attorney Wene, who negotiated the deal, to offer to have the District pay all closing costs. The board knew the District was acquiring the home and property “as is” and never instructed Attorney Wene to seek any improvements as a condition of purchase. Finally, the Board has sophisticated members who certainly understand the common practice is that buyers and sellers prorate taxes during real estate transactions. Put another way, there is no evidence that the Board members had any reason to believe the McKnights would pay the taxes during the period when the District owned the property.

**4.4 Conclusion and Suggested Action.** The language added to the purchase agreement did not change the deal previously approved by the Board; it expressly stated what both parties already understood. Expressly adding these terms to the agreement was not done unilaterally by Director Hillman; rather, it was done with the full knowledge of then-Chairman Headings, then-Director Reski, and Attorney Wene, who were the people actively involved in the acquisition of the property. Accordingly, no District action is necessary.

**5.0 ALLEGATION – DIRECTOR HILLMAN BENEFITTED FINANCIALLY FROM THE MCKNIGHT PURCHASE.**

**5.1 Issue.** Did Director Hillman gain financially from McKnight property purchase?

**5.2 Rule.** A public officer who has a pecuniary or proprietary interest in the decision of a decision at issue cannot participate in the matter. A.R.S. § 38-503; *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

**5.3 Analysis.** There is no evidence or credible claim that Director Hillman gained financially from the District purchasing the McKnight property.

**5.4 Conclusion and Suggested Action.** The allegation has no support and should be discarded. No District action is necessary.

**6.0 ALLEGATION – DIRECTOR HILLMAN UNILATERALLY DECIDED TO PAY FOR REPAIRS TO THE WILSON HOME.**

**6.1 Issue.** Did Director Hillman unilaterally agree to pay for repairs to the Wilson home?

**6.2 Rule.** Substantive policies and decisions of a special improvement district are determined by the majority of a quorum of the board of directors. *Post v. Wright*, 37 Ariz. 105, 289 P. 979 (1930).

**6.3 Analysis.** According to Gary and Sheri Wilson, on October 28, 2022, a District mainline broke and water flowed onto their property, causing damage to their home. *See Attachment 6.*<sup>3</sup> District staff instructed the Wilsons to call a restoration company and they called Sunshine Restoration, which began work on October 28, 2022. On November 2, 2022, District Field Manager Jim Baldwin told the Wilsons that the damage resulted from the District’s waterline break and the District would pay for the restoration. On or about November 11, 2022, Sunshine Restoration submitted an invoice to the District for \$5,564.42. The District paid this invoice.

On November 29, 2022, Sunshine Restoration submitted another invoice to the District for \$9,019.80. Field Manager Baldwin explained to the Wilsons that the District thought the earlier invoice was the final cost. The next day Director Hillman contacted Sunshine Restoration and requested additional supporting documentation. After consultation with then-Chairman Headings, she then submitted the information to the District’s insurance company. On or about December 15, 2023, the District’s insurer denied the claim. Director Hillman informed the

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<sup>3</sup> The statements set forth below are the facts as stated by the Wilsons to support their claim. This memo did not attempt to determine the truth of the facts asserted by the Wilsons.

Wilsons of this decision and suggested the Wilsons submit a claim to their home insurer, which they did, but their claim was denied.

On January 25, 2023, Sheri Wilson sent a request to Director Hillman asking the District to pay the \$9,019.80 invoice from Sunshine Restoration. Director Hillman forwarded this request to then-Chairman Headings, Director Bagshaw, and Attorney Wene. The matter was discussed by the District board on April 27, 2023.

At no time did Director Hillman act alone to pay any amount related to the Wilson's home restoration. Field Manager Jim Baldwin, not Director Hillman, was the District representative who agreed to pay for the restoration initially. Director Hillman was the person who brought the matter to the attention of the Board and attorney. When the second invoice was received, she processed the claim, informed the Board and its insurance carrier of the second claim, and then informed the Wilsons that neither agreed to pay the invoice at that time.

One could argue that Field Manager Baldwin acted unilaterally and improperly by telling the Wilsons that the District would pay for the restoration of their home without board approval. However, Field Manager Baldwin did consult with then-Chairman Headings and seems to have acted out of a sense of duty, fairness, and compassion for the Wilson's plight, which should mitigate any reprimand.

**6.4 Conclusion and Suggested Action.** Director Hillman did not unilaterally decide to pay the \$5,564.42 invoice from Sunshine Restoration and did not violate any rule. Paying the restoration expenses was an issue decided by the Board.

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**7.0 ALLEGATION – DISTRICT EMPLOYEES AND EQUIPMENT USED TO PERSONALLY BENEFIT THEN-CHAIRMAN HEADINGS.**

**7.1 Issue.** Did then-Chairman Headings improperly benefit from the use of District labor and equipment?

**7.2 Rule.** A public official should not participate in decision-making if the official may receive a financial gain or loss in the process. *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

**7.3 Analysis.** In 2022, then-Chairman Headings was building a structure at his home and hired District employees to assist the construction. The District employees worked on their own time and were paid reasonable rates. However, the District employees did use District tools and excavator to perform the work. In 2023, then-Chairman Headings purchased garage doors that needed to be transported to his home. He asked District staff to transport the doors to his home when the staff were driving back from the area during work hours. The District staff agreed and performed the work using a District truck during work hours.

Former Chairman Headings admits these acts occurred and in retrospect understands that at a minimum these actions give the appearance of impropriety. His view is that the use of the District's equipment did not financially harm the District and any cost for equipment use would be *de minimis*. Similarly, the delivery of the door panels took very little time and required just a few minutes of labor time. While Mr. Headings may be correct, it was still improper. It is important to note, however, previously the District allowed staff to utilize District tools and equipment for personal projects. This policy certainly blurred the line between proper and improper use of District equipment and has been rightfully discontinued.

**7.4 Conclusion and Suggested Action.** Then-Chairman Headings should not have used District labor and equipment for personal benefit. He understands this action violated the rules

governing board members and has resigned. No District action is necessary since then-Chairman Headings has resigned.

**8.0 ALLEGATION – BOARD MEMBERS WRONGFULLY TERMINATED EMPLOYEES WITHOUT PROPER AUTHORITY.**

**8.1 Issues.** Have individual board members terminated employees without board authorization? Have individual board members threatened to fire employees for wrongful reasons? Has the board created a hostile work environment?

**8.2 Position.** The District is prohibited from commenting upon on certain specific employee matters and the allegations assert litigation regarding these issues is forthcoming. Therefore, these issues should not be addressed herein.

**9.0 ALLEGATION - DIRECTOR HILLMAN WRONGFULLY ACCESSES AND CONTROLS DISTRICT ACCOUNTING.**

**9.1 Issues.** Does Director Hillman control the District accounting system? Has Director Hillman exceeded her authority as a board member when performing accounting work? Has Director Hillman embezzled District Funds?

**9.2 Rule.** The District's Bylaws § 5.5 requires the treasurer to pay all expenses pursuant to District procedures, report all financial data to the board monthly, and perform other duties as directed by the Board. Attachment 1. Embezzlement is the fraudulent taking of personal property by someone to whom it was entrusted. *Drake v. State*, 53 Ariz. 93 (Jan. 3, 1939).

**9.3 Analysis.** Director Hillman is the District Treasurer. District staff directly processes and accounts for revenues and expenses, reconciles the books, and performs the day-to-day booking functions. The District's outside accounting firm audits the books annually. Director Hillman

oversees these activities as Treasurer and access to the accounting system, but her access is not controlling. Director Hillman takes an active role in performing these duties, and some may argue she is too involved in the accounting work. However, there is no bright line regarding what the Treasurer can and cannot do.

There have been allegations that Director Hillman has embezzled District funds. This allegation is not supported by any facts. Moreover, the fact that monthly financial reports are made public and that District staff perform the daily accounting work makes this claim very difficult to believe that Director Hillman somehow embezzled District funds.

**9.4 Conclusion and Suggested Action.** Director Hillman does not control the accounting system. She actively works on District financial matters but there is no evidence of wrongdoing, including embezzlement. Moving forward, it would be helpful for the Board to expressly define the treasurer's tasks and clearly delineate the tasks both staff and the treasurer should conduct.

**10.0 Allegation – Director Hillman Directed Staff to No Longer Contract with Eberhardt Excavation, LLC.**

**10.1 Issue.** Did Director Hillman improperly instruct staff to no longer hire Eberhardt Excavation, LLC (“Eberhardt”) for projects?

**10.2 Rule.** The general manager is the principal procurement officer with the authority to procure and supervise the procurement of services. District Rules and Regulations require the procurement process be conducted reasonably and ethically. *Id.* at § 5.

**10.3 Analysis.** According to field staff, Eberhardt is an important local contractor who performs tasks at a reasonable rate. District staff directly contracts with Eberhardt to perform work that staff does not have the time or expertise to perform. For a short time Eberhardt apparently employed a former District employee who was an outspoken critic of the District and

the Board. Eberhardt continues to serve as a District contractor and has been hired to perform work during this month, but the former employee does not seem to be involved in these projects.

In March 2023, then-Chairman Headings did state that he no longer wanted staff to hire Eberhardt to work on most jobs. The reason given by Headings was two-fold. First, the District has staff and equipment capable of trenching and repairing water lines. Contractors should only be hired when the District's staff is incapable of doing the work, such as pulling a well pump or installing electrical equipment. Second, hiring contractors is much more expensive than staff performing the work. Regardless, Headings resigned shortly thereafter and Eberhardt has continued to work on District projects.

According to Director Hillman, she did not tell staff they could not hire Eberhardt any longer. According to District staff, in mid-April Director Hillman made a comment that she did not believe the District should hire Eberhardt if he is going to hire people who are going out of their way to be critical of the District and the Board. According to District staff, this comment was more of a social conversation and her opinion, not a directive.

**10.4 Conclusion and Suggested Action.** Staff has not stopped procuring Eberhardt's services. There is no evidence that Director took any action that violated the procurement code. Therefore, no Board action is necessary.

**11.0 ALLEGATION - DIRECTOR HILLMAN PROHIBITED STAFF FROM TAKING BOARD MEMBERS TOURING THE WATER SYSTEM AND EMPLOYEE FIELD WORK.**

**11.1 Issue.** Did Director Hillman improperly prohibit field staff from taking other Directors to inspect the water system and work sites?



**11.2 Rule.** Substantive policies and decisions of a special improvement district are determined by the majority of a quorum of the board of directors. *Post v. Wright*, 37 Ariz. 105, 289 P. 979 (1930).

**11.3 Analysis.** Director Hillman denies she ever tried to prevent Board members from touring the system. She states that she encourages board member to become familiar with the system. She explained that previously the manager would take new Directors on system tours and show work being done. She agrees that no Director has the authority to prevent another Director from speaking with staff, touring the system, or inspecting work sites.

**11.4 Conclusion and Suggested Action.** There is no evidence that Director Hillman prohibited staff from taking Directors to see the water system and work sites and states she encourages such involvement. Staff continues to be available for such activities. No Board action is necessary.

**12.0 ALLEGATION – DIRECTOR BAGSHAW’S SECRETARY’S REPORT DATED MARCH 23, 2023 DEFAMED MEMBERS OF THE PUBLIC.**

**12.1 Issues.** Did the Secretary’s report dated March 23, 2023 defame anyone?

**12.2 Rule.** Defamation of character requires a publication to be false and bring a person into disrepute, contempt, or ridicule, or impeach the person’s honesty, integrity, virtue, or reputation. *See Godbehere v. Phx. News, Inc.*, 162 Ariz. 335, 341, 783 P.2d 781, 787 (1989). Statements of opinion are not actionable. See Restatement (Second) of Torts § 566 (1977). Statements are not actionable if interpreted as political, rhetorical invective. *Greenbelt Coop. Publ’g Ass’n, Inc. v. Bresler*, 398 U.S. 6, 14, 90 S.Ct. 1537, 26 L.Ed.2d 6 (1970) (holding the term “blackmail” nonactionable because it was used as “no more than rhetorical hyperbole,” and “a vigorous epithet”).

**12.3 Analysis.** On March 23, 2023, Director Bagshaw presented his Secretary’s report that is in part critical of certain unnamed people who were vocally critical of certain Board members.<sup>4</sup> Attachment 7. Director Bagshaw’s comments were made in a political context and such statements are not defamatory unless proven to be false, not an opinion or hyperbole. Director Bagshaw is entitled to his opinion about people’s actions and motivations. Although some may urge Director Bagshaw to be more careful with his statements, this likely does not rise to the level of defamation.

In addition, the complaints propose that Director Bagshaw should not be allowed to use his position to carry out a “personal vendetta” against citizens of Pine and Strawberry. While it is clear Director Bagshaw disagrees with some of the vocal critics of the District, he is entitled to his thoughts and he can question the motives and qualifications of those critics. Likewise, those same critics can question the Directors’ actions, motivations, and qualifications, which is a right they freely and commonly exercise.

**12.4 Conclusion and Suggested Action.** The District cannot “unring the bell”. Director Bagshaw made his comments public. It is very doubtful that his statements rise to the level of actionable defamation or caused any damage to the unnamed people he was referencing. Nevertheless, the aggrieved parties can take any action they deem appropriate and the District may react at that time. No Board action is necessary at this time.

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<sup>4</sup> The allegations also take issue with Director Bagshaw’s statement that some disgruntled ex-employees deserved to be terminated. As noted previously, the memorandum will not address any employment matters.

**13.0 POSITION - THE DISTRICT SHOULD HIRE A PROFESSIONAL HUMAN RESOURCES FIRM.**

**13.1 Issue.** Should the District hire a professional human resources firm to handle employment matters?

**13.2 Rule.** The District Board has the authority to hire staff and consultants. *See* A.R.S. § 48-909.B.10.

**13.3 Analysis.** This position is essentially a suggestion to the Board. The Board has the discretion to hire a human resources firm to address employee matters. While such a firm could certainly help the District manage its staff, the cost will likely be high.

**13.4 Conclusion and Suggested Action.** The Board has the option, but not the obligation, to hire a human resources firm. This matter may be appropriate for a committee to research and provide potential consultants and cost estimates for Board consideration. Nonetheless, no Board action is required.

# **ATTACHMENT 1**

**BYLAWS OF THE BOARD OF DIRECTORS FOR  
THE PINE/STRAWBERRY WATER IMPROVEMENT DISTRICT  
(AS AMENDED)**



**I. PINE/STRAWBERRY WATER IMPROVEMENT DISTRICT BOARD.**

The Pine/Strawberry Water Improvement District (the "District"), representing citizens and residents of the communities of Pine, Arizona and Strawberry, Arizona (collectively, the "Communities"), was duly created and formed on July 2, 1996 by the Gila County Board of Supervisors in accordance with State Statute A.R.S. §§48-903 and 1012. At the same time, a Board of Directors was created to oversee the activities of the District (the "Board"). The purpose of the Board is to represent the interests of the Communities in securing long term and reliable sources of water for the Communities, and performing such other duties as required or provided by applicable State statute.

**II. MEMBERSHIP.**

Section 2.1 Members. The Board is comprised of those residents and property owners of the Communities appointed by the Gila County Board of Supervisors on July 2, 1996 as thereafter modified by resignations or replacements of those appointed, valid public elections held in conformity with applicable state and local laws, and any additional appointments made pursuant to State Statute, A.R.S. §48-1012C (collectively, the "Members" and individually, a "Member").

Section 2.2 Initial Members and Terms. As of July 2, 1996, the Gila County Board of Supervisors appointed the following original Board Members, who currently serve either two-year or four-year terms as follows:

Two-Year

Jerry Fleming  
Richard J. Hall  
Howard Matthews

Four-Year

William J. Johnson  
Melvin Van Vorst  
Edwin Welge  
Charles R. Sterbach

Section 2.3 Resignation. A Member resigning from the Board shall give written notice of such resignation to the Chairman, other Members, the Gila County Attorney's Office, and the Gila County Board of Supervisors.

Section 2.4 Vacancy. If a Member resigns or is removed, the Board will notify the Gila County Attorney's Office and the Gila County Board of Supervisors of such resignation or removal. The Board shall consider recommendations regarding a replacement Member. Pursuant to State Statute, A.R.S. §48-1012(C), and following consideration of such recommendations, the Board will appoint a replacement Member to fill a vacancy, and notify the Gila County Board of Supervisors of the replacement Member. Any replacement Member shall have all the rights and duties of any original Member, but shall not act on any existing committee or subcommittee until appointed thereto by the Chairman.

### **III. MEETINGS.**

**Section 3.1 Place of Meetings.** Meetings must be held in person, and conform to applicable state law regarding open public meetings, and at places designated by the Board. Regular meetings of the Board shall be held in public places as designated from time-to-time by the Board.

**Section 3.2 Notice.** Notices of any Board meeting shall be called after at least three days' public notice to the Communities and to each Member of the Board, pursuant to State Statute, A.R.S. §38-431.02. The primary purpose of all meetings shall be set forth in the public notice.

**Section 3.3 Participation in Meetings by Conference Telephone.** Members of the Board may participate in a meeting of the Board through the use of a conference telephone, so long as all participants in such meeting can hear and communicate with one another.

**Section 3.4 Quorum.** A number greater than fifty percent (50%) of the Board, or any committee (or subcommittee formed thereunder, as the case may be) constitutes a quorum of the Board (or of any committee or subcommittee) for the transaction of business at a meeting. Members present by telephone shall count toward the quorum. Except as otherwise required by these Bylaws, every act or decision done or made by a majority of the Members at a meeting duly held at which a quorum is present shall constitute the act of the Board (or committee or subcommittee). A meeting at which a quorum was initially present may continue to transact business notwithstanding the withdrawal of members, if any action taken is approved by at least a majority of the required quorum at such meeting.

**Section 3.5 Adjournment.** A majority of the Members of the Board whether or not a quorum is present, may adjourn any meeting of the Board to another time and place. If a meeting is adjourned for less than twenty-four hours, reasonable notice of the time and place of holding the adjourned meeting shall be given to Members of the Board who were not present at the time of adjournment.

**Section 3.6 Minutes.** The Secretary shall record minutes at each Board meeting and, when feasible, the minutes shall be distributed before the next scheduled meeting in draft form for Board approval and ratification. Three (3) business days after approval and ratification by the Board, Board meeting minutes will be available for the public upon request made to any Member.

### **IV. THE FUNCTIONS OF THE BOARD.**

**Section 4.1 Board Functions.** In the exercise of its powers and duties under applicable State Statutes, and in particular A.R.S. §48-1014, the Board shall, as it determines to be appropriate: (a) investigate current and potential sources of water for the Communities as well as the costs associated with maintaining or expanding present and potential sources; (b) formulate a plan or plans for improving present water sources of the

Communities (including formulation of a plan or plans for funding such improvements); (c) consult with the Gila County Board of Supervisors, the Gila County Attorney's Office, and other Federal, State, and Local government officials or agencies concerning development of long-term reliable water sources for the Communities; and (d) implement and formulate plans as necessary to provide long-term available water to Communities.

## V. OFFICERS.

Section 5.1 Officers. The officers of the Board shall be: (a) a Chairman, (b) a Vice-Chairman, (c) a Secretary, and (d) a Treasurer, each to be elected by a majority vote of a quorum of the Board. Each officer shall be elected annually at the Board's first meeting following the November elections, shall assume office on January 2 immediately following the November election, and shall serve a term of one year or until his/her successor is elected. The Chairman shall be the primary representative of the Board. In his absence, the Vice-Chairman shall be the primary representative of the Board.

Section 5.2 Duties of the Chairman. The Chairman shall: (a) convene timely and regular meetings of the Board; (b) preside at the meeting of the Board; (c) cause agendas to be prepared for the meetings of the Board with the assistance of all other Members; (d) appoint Members to committees and subcommittees; (e) serve as an ex-officio member of all committees and subcommittees to which the Chairman is not appointed as a member; and (f) perform such other duties as may be reasonably delegated to the Chairman by the Board, which are not inconsistent with applicable State Statutes and these Bylaws.

Section 5.3 Vice-Chairman. In general, the Vice-Chairman shall act for, and in place of, the Chairman, and perform all duties of the Chairman in the Chairman's absence.

Section 5.4 Secretary. The Secretary shall: (a) prepare and distribute in advance of each meeting the agenda for each meeting of the Board as developed and agreed pursuant to Section 5.2, above; (b) prepare for the Chairman a form of "Public Notice" for each meeting; (c) make physical arrangements appropriate for meetings of the Board; (d) cause attendance rosters for meetings of the Board to be completed, and retain all attendance rosters; (e) take, transcribe, distribute and retain the minutes of each meeting of the Board to other Members and to such other persons as the Board may direct; (f) distribute such notices and materials as directed by the Chairman; (g) keep files of all retained records of the Board; and (h) perform such other duties as may be directed by the Board, and which are not inconsistent with applicable State Statutes and these Bylaws.

Section 5.5 Treasurer. The Treasurer shall: (a) insure that all income received by the District is deposited with the Gila County Treasurer; (b) pay all expenses of the District in accordance with procedures adopted by the Board from time-to-time; (c) report all income, expenses, assets, and liabilities monthly to the Board; and (d) perform such other duties as may be directed by the Board, and which are not inconsistent with applicable State Statutes and these Bylaws. All checks or warrants issued by the

Treasurer in payment of expenses shall be signed by two officers as may be designated by the Board from time-to-time. The Treasurer will be responsible for handling any correspondence or contact with the Gila County Treasurer and the Gila County Finance Office.

**VI. COMMITTEES AND SUBCOMMITTEES.**

Section 6.1 Meetings. Committees and subcommittees consisting of two or more Members may be established by the Chairman and the Board. Any Member may attend any committee or subcommittee meeting.

Section 6.2 Duties. The duties and authority of a committee or subcommittee shall be determined in accordance with any actions taken by the Board at the time of such establishment of such committee or subcommittee.

Section 6.3 Action. Action by the committee or subcommittee shall require the affirmative vote of no less than a majority of Board members.

**VII. CONTINUING RIGHT OF MEMBERS TO ACT IN INDIVIDUAL CAPACITY.**

Section 7.1 Right to Act. While the Members acknowledge that they are acting in a fiduciary capacity as defined by law, nothing contained in these Bylaws shall: (a) prevent any Member from exercising or seeking to enforce or protect any of his/her rights as a homeowner or member of the Communities, or (b) otherwise affect the ability of any Member to act in his/her capacity as a private citizen. Actions taken by any Member in his/her capacity as a homeowner or private citizen shall not constitute action by the Board, nor shall such action bind the Board in any way.

**VIII. CONFLICTS OF INTEREST.**

Section 8.1 Disclosure. Every Member shall disclose any interest he/she may hold that is adverse to the Board, or the efforts of the Board. Such disclosure shall be in writing and submitted to the Chairman. Any Member directly financially interested in any matter that comes before the Board must recuse himself from the Board meeting during its discussion of and vote on that matter. Those Members with a financial interest in the matter shall nevertheless be counted for a quorum for the meeting.

**IX. REIMBURSEMENT.**

Section 9.1 Reimbursement. Reasonable expenses of the Board Members incurred in connection with Board business may be submitted to the District for reimbursement by the District, in accordance with A.R.S. §48-1013.



Section 9.2 Limitation. Request for reimbursement of expenses shall be limited to those reasonable items supported by receipts and itemized with particularity.

Section 9.3 Delivery. All requests for reimbursement expenses shall be forwarded to the Chairman for submission to the Board. Concurrently, with transmittal to the Chairman, copies of such requests shall be sent to other Members who so request.


**X. AMENDMENTS.**

Section 10.1 Amendments. These Bylaws may only be amended by a vote of a majority of the Members of the Board.

**CERTIFICATION.**

The undersigned certify that they are duly appointed Members of the Pine/Strawberry Water Improvement District Board, and that the foregoing is a true and correct copy of the Bylaws as amended by the Board at a duly noticed meeting of the Board held on January 8, 2000.

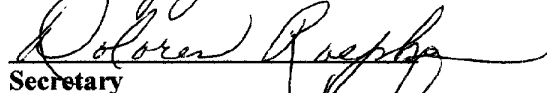
DATED March 11, 2000.

  
Chairman

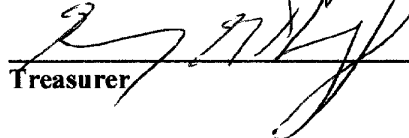
DATED March 11, 2000.

  
Vice-Chairman

DATED March 11, 2000.

  
Secretary

DATED March 11, 2000.

  
Treasurer

# **ATTACHMENT 2**

## Steve Wene

---

**From:** Steve Wene  
**Sent:** Tuesday, October 11, 2022 3:36 PM  
**To:** Mona & Terence Baker  
**Subject:** Tentative Agreement for 4889 Rim View Loop, Strawberry

Hello Ladies,

This is just to confirm that Margaret McKnight has agreed to the offer of \$475,000 provided the district pays the closing costs. I will confirm with my client and move forward as soon as we can. Thanks again.



Steve Wene  
Shareholder

**1850 N. Central Avenue, Suite 1100**  
**Phoenix, Arizona 85004-4541**  
**Office (602) 604-2189**  
**[www.law-msh.com](http://www.law-msh.com)**



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# **ATTACHMENT 3**

**PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT**

**Special Session**

**Thursday Oct 13, 2022, at 3:00 p.m.**

**PSWID Administrative Office**

**6306 W Hardscrabble Rd.**

**Pine, AZ 85544**

**1. CALL TO ORDER**

Raymond Headings called the meeting to order at 3:02 p.m.

**2. PLEDGE OF ALLEGIANCE**

Conducted by Raymond Headings

**3. ROLL CALL OF BOARD MEMBERS**

Conducted by Raymond Headings: Board members present: Raymond Headings and Sharon Hillman. George Gorkowski, Cory Ellsworth, and Larry Bagshaw were present via Go to Meeting. A quorum was present.

**4. CALL TO THE PUBLIC**

None

**5. NEW BUSINESS**

- I. **DISCUSS AND TAKE POSSIBLE ACTION REGARDING THE PURCHASE OF A 2022 FORD F350 SUPER DUTY FOR \$76,338.66. Raymond Heading/George Gorkowski.** Due to an aging fleet and the sale of one of the old district trucks, and the hiring of two new field staff; the district needs a new truck. George Gorkowski got quotes from San Tan Ford and Bell Ford. Bell Ford could give us the best price on a 2022 F-350 with a service body. It would be \$76,338.66 with a government contract price. Sharon Hillman moved that we purchase the truck for the agreed-on price. Larry Bagshaw seconded the motion. The motion carried with George Gorkowski abstaining since he knew the salesman.
- II. **DISCUSS AND TAKE POSSIBLE ACTION REGARDING THE PURCHASE OF THE MCKNIGHT PROPERTY INCLUDING THE WELL FOR THE AGREED UPON PRICE OF \$475,000 WITH THE DISTRICT TO PAY ALL CLOSING COSTS. Raymond Headings.** After several negotiations conducted by our attorney, Steve Wene with the McKnight family; they agreed to sell their entire property to PSWID for \$475,000.00 which was the maximum the board had agreed to in a prior executive session. George Gorkowski moved that the district purchase the McKnight property for \$475,000.00. Cory Ellsworth seconded the motion. The motion carried unanimously. We will be getting the property surveyed.

**6. IDENTIFY POTENTIAL AGENDA ITEMS FOR THE NEXT SCHEDULED BOARD OF**

**DIRECTORS MEETING ON OCTOBER 27, 2022.**

November meeting date since 4<sup>th</sup> Thursday is Thanksgiving.

- 7. MOTION TO ADJOURN.** Sharon Hillman moved the meeting be adjourned. George Gorkowski seconded the motion. The motion carried unanimously.

APPROVED

# **ATTACHMENT 4**

**Steve Wene**

---

**From:** Mona & Terence Baker <tandmbaker94@yahoo.com>  
**Sent:** Monday, October 17, 2022 11:59 AM  
**To:** Sharon Hillman  
**Cc:** Steve Wene; Raymond Headings; Tom Reski; dfmf500@gmail.com  
**Subject:** Re: McKnight Purchase Agreement

Sharon,

Initially, before I got a chance to review her tax statement, I thought that as well. But after reviewing her tax statement, she would be responsible for the first half. We would just like to have it documented that the PSWID is responsible for the second half of the taxes in the amount of \$1,182.52.

Make sense? If not, just let me know.

Thank you,

Mona Baker  
314.985.9264

On Monday, October 17, 2022, 01:39:28 PM CDT, Sharon Hillman <shillman@pswid.org> wrote:

Mona

My misunderstanding as I thought you wanted us to reimburse Margaret the first half and the 2nd half is our responsibility so I didn't include it in the document.

Can you clarify before I make additional revisions?

Sharon Hillman  
PSWID-Finance Manager  
602.819.7822

On Oct 17, 2022 10:53 AM, Mona & Terence Baker <tandmbaker94@yahoo.com> wrote:  
Sharon,

Just to be clear, the \$1,182.52 that Margaret paid was for the first 1/2 of 2022. The remaining A\$1,182.52 would be for the PSWID. Your statement in the contract states that the district will cover the first half, but needs to say the 2nd half. Margaret is not asking for the amount she paid last week to be returned.

Please advise,

Mona Baker  
314.985.9264

On Monday, October 17, 2022, 12:05:16 PM CDT, Sharon Hillman <shillman@pswid.org> wrote:



Mona

I have done a second revision to Page 1 of the agreement per your request of today. Please provide us with a key to the house so we can do our inspection. Please send the signed agreement so I can take it to the Title Company to begin the closing.

Thanks

*Sharon Hillman*

*PSWID Finance Manager*

*602.819.7822*

**From:** Mona & Terence Baker <tandmbaker94@yahoo.com>

**Sent:** Monday, October 17, 2022 9:33 AM

**To:** Sharon Hillman <shillman@pswid.org>

**Cc:** Steve Wene <swene@law-msh.com>; Raymond Headings <rheadings@pswid.org>; Tom Reski <treski@pswid.org>; dfmf500@gmail.com

**Subject:** Re: McKnight Purchase Agreement

Sharon,

Thank you for the revision. I took this to Margaret over the weekend, and she had an additional request. Can you please insert the verbiage that the PSWID is purchasing the land, house and well in "as is" condition?

I have also included the 2022 Real Property Tax Notice. Margaret paid \$1,182.52 last week to the Gila County Treasurer. In an effort to keep this as simple as possible, we would like to propose the the remaining \$1,182.52 be paid by the district in the purchase of the property. This would also need to be included in the agreement.

Please let me know your thoughts. I will be happy to have the agreement signed this evening, and returned to you tonight, if we can come to an agreement on these additions.

Thank you,

Mona Baker

314.985.9264

On Friday, October 14, 2022, 04:23:16 PM CDT, Sharon Hillman <[shillman@pswid.org](mailto:shillman@pswid.org)> wrote:

Mona

Please see revised page 1 of the agreement indicating the District will cover all costs related to the sale.

Thanks

*Sharon Hillman*

*PSWID Finance Manager*

*602.819.7822*

**From:** Mona & Terence Baker <[tandmbaker94@yahoo.com](mailto:tandmbaker94@yahoo.com)>

**Sent:** Friday, October 14, 2022 1:28 PM

**To:** Sharon Hillman <[shillman@pswid.org](mailto:shillman@pswid.org)>

**Cc:** Steve Wene <[swene@law-msh.com](mailto:swene@law-msh.com)>; Raymond Headings <[rheadings@pswid.org](mailto:rheadings@pswid.org)>; Tom Reski <[treski@pswid.org](mailto:treski@pswid.org)>; [dfmf500@gmail.com](mailto:dfmf500@gmail.com)

**Subject:** Re: McKnight Purchase Agreement

I would feel more comfortable with the verbiage being included that the PSWID will be covering all additional costs for the sale. Please advise.

Mona Baker

On Friday, October 14, 2022, 09:33:39 AM CDT, Sharon Hillman <[shillman@pswid.org](mailto:shillman@pswid.org)> wrote:

Mona

I referenced the costs of \$2,724 in the agenda item to the Board for them to approve the costs as well. Please provide the tax bill and we will take care of our portion in the closing.

I believe we have within 30 days in the agreement so we will tell the Title company as soon as they can have the documents ready.

I will take the agreement to them as soon as we have Maggie's signature.

Thanks

Sharon Hillman  
PSWID-Finance Manager  
602.819.7822

On Oct 14, 2022 7:03 AM, Mona & Terence Baker <[tandmbaker94@yahoo.com](mailto:tandmbaker94@yahoo.com)> wrote:

Sharon,

There is no reference in this document in regard to the PSWID being responsible for any and all costs associated with the preparation and selling of the property to the PSWID. This was noted in the email from Steve Wene earlier this week.

One other note of reference is that of the property taxes that have been paid through March of 2023. Margaret advised me this morning that she recently paid for them. I would like the PSWID to credit Margaret for the months of January, February and March.

Please let me know what I can do to help. We also would like to finalize this process as soon as possible.

Thank you,

Mona Baker

314-985-9264

----- Forwarded Message -----

**From:** Sharon Hillman <[shillman@pswid.org](mailto:shillman@pswid.org)>

**To:** Mona & Terence Baker <[tandmbaker94@yahoo.com](mailto:tandmbaker94@yahoo.com)>; Raymond Headings <[rheadings@pswid.org](mailto:rheadings@pswid.org)>; Steve Wene <[swene@law-msh.com](mailto:swene@law-msh.com)>; Tom Reski <[treski@pswid.org](mailto:treski@pswid.org)>

**Sent:** Thursday, October 13, 2022, 05:29:14 PM CDT

**Subject:** McKnight Purchase Agreement

Mona

The Board approved the purchase of this property this afternoon in a Special Meeting. The Chairman signed the agreement so when you have Margaret sign on behalf of the Trust, send the signature page to me. I will take the agreement to the Title Company to start the sale process.

Thanks

*Sharon Hillman*

*PSWID Finance Manager*

*602.819.7822*

# **ATTACHMENT 5**

## PROPERTY & WELL PURCHASE AGREEMENT

This Well Purchase Agreement (the "Agreement") is dated, entered into, and made effective as of October 13, 2022 ("Effective Date"), by and between the McKnight Trust (Margaret I McKnight, Trustee) dated February 24, 2003 (the "Trust" and/or "Seller") and the Pine-Strawberry Water Improvement District, a political subdivision of Gila County, Arizona (the "District" and/or "Buyer"), with reference to the following:

### RECITALS

A. The Trust desires to sell to the District and the District desires to purchase from the Trust its property located in Strawberry, Arizona in Gila County the Trust's property as more fully described in the attached Exhibit A (Legal Description of Trust Property).

B. The Gila County Parcel 301-08-168, Lot 26 of Strawberry View located at 4889 N Rim View Loop, Strawberry, AZ 85544 including the water well and associated water rights that are the subject of this Agreement are identified in the records of the Arizona Department of Water Resources as Well Identification No. 55-561197, (the "Well").

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

### AGREEMENT

#### 1. Purchase and Conveyance of Property and Well

1.1. In exchange for the Property, as set forth below, the District shall tender to the Trust the amount of \$475,000.00 (the "Purchase Price") at the time of Closing (defined below). The District will also cover all costs related to this sale including the second half property taxes in the amount of \$1,182.52. This purchase is "as is condition" of the Property including Land, Buildings and Well.

1.2. In exchange for the Purchase Price, the Trust shall convey to the District at Closing all its right, title, and interest in and to:

1.2.1. The Property and Water Well, ADWR ID No. 55-561197, including all water rights, permits, rights of use, facilities, infrastructure, and equipment appurtenant to and/or necessary for the continued operation and use of the same, as more specifically described and in a form similar to the attached Exhibit B;

1.3. The parties shall perform those acts and sign all documents required by this Agreement that may be reasonably necessary to effectuate the terms of this Agreement before and after Closing, as necessary.

1.4. The parties shall agree upon a closing date and time to occur within 30 days of the Effective Date of this Agreement (the "Closing"). Before or at the time of Closing, all required conveyance documents for the Property and Well shall be executed and the Purchase Price tendered, as required above.

2. Authority and Assignment.

2.1. By executing this Agreement, the District, the Trust, and each signor on behalf of the same, represents and warrants they have full capacity, right, power, and authority to execute, deliver and perform this Agreement and all documents to be executed by the parties related thereto.

2.2. Either party may assign this Agreement, or any of its rights under this Agreement, with the written permission of the other party, which shall not be unreasonably withheld.

3. Hold Harmless.

3.1. The Trust shall indemnify, defend, and hold the District and any affiliate of the District which has or makes use of the District's facilities, harmless from any claim to any right of use of the Well or the Easements that is not disclosed at or before the Effective Date of this Agreement, regardless of whether such claims are meritorious.

4. Time / Headings.

4.1. Time is of the essence with the respect to the provisions of this Agreement.

4.2. The headings of this Agreement are for purposes of convenience and shall have no legal effect.

5. No Presumption Against Drafting Party.

5.1. Each party to this Agreement acknowledges that it has been represented by independent legal counsel in connection with this Agreement or had adequate opportunity to obtain representation by independent legal counsel and declined to do so. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

6. Controlling Law / Venue / Attorneys' Fees. This Agreement shall be subject to and controlled by the laws of the State of Arizona. Any legal action arising out of this Agreement shall be filed in the Superior Court in and for Gila County, Arizona. The prevailing party in any legal action arising from this Agreement shall be entitled to its attorneys' fees, court costs, and costs of collection.

**SELLER:**

McKnight Trust dated February 24,  
2003


---

Margaret I McKnight, Trustee  
603 Meyer Road  
Wentzville, MO 63385

**BUYER:**

The Pine-Strawberry Water  
Improvement District

---

  
Raymond Headings, Board Chair  
P.O. Box 134  
Pine, AZ 85544



**EXHIBIT A**  
Property & Well Purchase  
Agreement (Legal Description of  
Trust Property)

Lot 26 of Strawberry View, according to the plat of record in the office of the  
County Recorder of Gila County, Arizona, recorded in Map No. 421

**EXHIBIT B**

Property & Well Purchase Agreement  
(Well Description)

ADWR Registration Number 55-561197

# **ATTACHMENT 6**



KISSEE SOLUTIONS, PLLC  
480-343-3452 • KISSEESOLUTIONS.COM • SHERRA@KISSEESOLUTIONS.COM

RECEIVED

APR 12 2023

Initial: MM

April 10, 2023

**VIA U.S. MAIL and CERTIFIED MAIL**

Pine Strawberry Water Improvement District  
6306 Hardscrabble Mesa Rd, Box 134  
Pine, AZ 85544  
shillman@pswid.org

Re: Restoration/Service/Remodel @ 6100 W. Skyview Cir., Pine, AZ 85544

Ms. Hillman or To Whom It May Concern:

Please be advised that my office represents Gary and Sheri Wilson (the "Wilson's") in the above-mentioned matter. As such, any communication regarding this matter should be directed to my office.

Pine Strawberry Water Improvement District "PSWID" is responsible for the water main break (the "Incident") that happened on October 28, 2022 and is responsible for the COMPLETE restoration of the damages due to the Incident suffered by the Wilsons at their property located at 6100 W. Skyview Cir., Pine, AZ 85544 (the "Home").

**PSWID INCIDENT:**

On October 28, 2022, a PSWID water main, located under W. Skyview Circle in front of the Wilson's Home, broke. Due to the break, an enormous amount of water poured onto the property and into the Home located on the property, causing substantial damage. The Wilson's were not home at the time, but were contacted by their neighbors who alerted them to the "excessive water running from the street in front of [their] house onto [their] property." The Wilsons gave immediate permission to the neighbors to enter their Home to assess the situation. The neighbors reported seeing "water flowing throughout the finished basement/walk-out area...and water pouring out of the electrical panel on the home." Extensive pictures and video were taken of the water inside the home and of the cause of the water "(bubbling up from the street, and flowing toward [their] house, entering into [their]crawl space and overflowing to [their] downstairs areas and through [their] electrical panel.)"

The Wilsons immediately notified Heather at PSWID and PSWID immediately sent their “work crew” out to repair their broken line. Upon learning the leak was indeed from a PSWID source, Heather instructed the Wilsons that “she was in communication with the Chairman of the water company, who instructed [the Wilsons] to contact a restoration company to come to [the

Home] to get the water dried out of [their] home. The Wilsons contacted Sunshine Restoration Company “Sunshine” who came to the Home the same day to start the dry-out process.

When the Wilson’s returned to their Home on November 2, 2022, they received a call from Jim Baldwin, Field Manager for PSWID “Jim,” who confirmed “the water line break was indeed their fault, and...that as a result of their water line breaking and causing damage to [their] home, [PSWID was] going to ‘make it right and cover the costs’ for the damages [the Wilsons] sustained.”

The Wilsons advised Jim that there was “damage to the baseboards and to some electrical items that still needed to be researched and corrected” and gave him the information for Sunshine Restoration Company. Jim, or someone from PSWID, contacted Sunshine and, from that point on, was in direct communication with Sunshine as the responsible party.

#### SUNSHINE DRY-OUT:

On October 28, 2022, Sunshine arrived at the Home to begin the dry-out process. According to Sunshine’s Estimate and Invoice of same date, this process was substantial due to the amount of water that entered the Home, permeating throughout the downstairs crawl space, storage room, pool room, garage, and bar; and the emergency nature of the incident.

Plainly stated on this invoice was “Any subsequent repair and/or cleaning work necessary as a result of damage incurred will be included in a separate estimate.”

Sharon Hillman with PSWID “Sharon” authorized payment of the Invoice “for damages due to a water main break.”

#### CLEANUP AND RESTORATION:

After the dry-out process is complete, the cleanup and restoration process begin. The damaged area must be restored to its original or similar condition. According to the Sunshine Estimate and Invoice of November 7, 2022, this restoration was more substantial than anticipated. Not only was there damage to the drywall, baseboards, concrete and tile flooring in the above-mentioned rooms, there was also electrical and HVAC damages. Remember the “water pouring out of the electrical panel” mentioned above? The water damaged an electrical outlet and fried the HVAC compressor, both needing to be replaced by licensed professionals.

PSWID received this invoice on November 29, 2022. Jim responded with “We had assumed the initial bill was the final cost” and requested supporting documents to submit to the insurance company. Sharon emailed Sunshine again on November 30 requesting a detailed invoice, which Sunshine provided.

As stated above, PSWID was well aware that there could be further invoices coming for the “subsequent repair and/or cleaning work necessary as a result of damage incurred.” You were informed by Sunshine on their first invoice and you were informed by the Wilsons. PSWID has not paid this invoice as of this letter.

#### MITIGATION:

The Wilsons did more than was required of them in attempting to mitigate the costs involved; and they didn't have to do anything.

First, the Wilsons had their neighbors elevate the furniture in the effected rooms to mitigate further damage and further costs to PSWID.

Second, the Wilsons contacted PSWID immediately to fix the water main break.

Third, Mrs. Wilson's father immediately went to the Home and removed 72 gallons of water prior to Sunshine arriving, in an attempt to minimize the damages.

Fourth, the Wilsons allowed for Sunshine to take matching baseboards from their garage to replace damaged baseboards in other rooms, in an attempt to help with the costs of restoration to PSWID.

Fifth, Sunshine went to rip out all the drywall on the affected walls and the Wilsons told them that was not necessary, as to mitigate costs of restoration to PSWID.

PSWID's expenses due to the incident would have been much higher had these mitigation steps not been taken.

#### INSURANCE:

Sometime after receiving the second invoice from Sunshine, PSWID submitted a claim to their insurance provider, Auto-Owners. The claim was denied based on the incident being considered a “sudden and accidental leak” and lacking negligence on PSWID's part. Sharon reached out to Mrs. Wilson informing of the denial and advising that the Wilsons “would need to submit a claim to [their] own insurance company.” Mrs. Wilson called Sharon and advised that their “homeowners insurance company should not have to be involved since the damage was no fault of [theirs].” Sharon insisted “that was the only solution.” So, the Wilsons filed a claim on January 20, 2023, which was denied. Mrs. Wilson contacted Sharon informing of denial and Sharon stated that “after further researching on her end, they won't issue the final payment to Sunshine.”

The Wilsons contacted Sharon again on January 25<sup>th</sup> in an attempt of getting PSWID to pay Sunshine. Sharon stated that she “contacted the...insurance company and asked them to reconsider...They are still denying the claim.” PSWID then spoke to their attorney and were told that “the denial will stand.”

The PSWID board thus is refusing to pay Sunshine. I would inform you that regardless of whether negligence played a role in the water main break, PSWID is responsible for the break and the damages caused by the break.

COLLATERAL DAMAGES:

The Wilsons have been damaged far beyond the visual damages to their home caused by PSWID. They were barred from the use and enjoyment of their home while the dry-out, cleanup and restoration process was transpiring at their Home. They are barred from doing other work on their Home due to PSWID's unpaid debt. This encounter has taken the enjoyment of their property away from them.

PSWID is responsible for this.

PSWID KNOWLEDGE OF DEFECTIVE PIPES:

PSWID had full knowledge that the pipes in the Wilson's community could break at any time. There have been multiple other water leaks in and around the community, as the pipes are dated in extremely poor condition. This is evidenced by the fact that the entire PSWID piping system in Portal I and II are slated for replacement in the coming months.

This knowledge could be seen as an intentional act to allow dangerous pipes to remain in the ground waiting for the powder-keg.

CONCLUSION:

The Wilsons had extensive damage done to their Home caused by PSWID's water main break. PSWID confirmed that the damages caused to the Wilson's Home was their responsibility, took ownership of that responsibility and informed the Wilson's they would take care of it. PSWID has not fulfilled their obligation to this regard and as such, the Wilsons are being contacted by Sunshine to pay the final bill to the tune of \$9,019.80. The Wilsons are NOT responsible and will NOT be paying PSWID's debt.

PSWID's responsibility goes beyond whether your insurance carrier will pay a claim. Your responsibility is present because it was excessive water from your water pipes that trespassed onto the Wilson's property and into their Home and caused the damages. Your responsibility is present because it was your water pipes that caused a private nuisance to the Wilsons. Your responsibility is present because you knew the condition of the water pipes and that breaks were inevitable and imminent. PSWID is responsible for paying Sunshine the remaining debt of \$9,019.80, or whatever the current amount is due to late penalties and interest charges; and to inform Sunshine that the Wilsons are not responsible for the debt.

**THIS IS YOUR ONE AND ONLY DEMAND. PLEASE RESPOND WITHIN TWENTY (20) DAYS OF RECEIPT OF THIS LETTER. IF YOU DO NOT RESPOND, MY CLIENT WILL TAKE ANY AND ALL LEGAL ACTIONS AVAILABLE TO THEM.**

Kind regards,

*Sherra Kissee*

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# **ATTACHMENT 7**



# PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT

## Board Action Item

<b>MEETING DATE:</b>	<b>March 23 2023</b>
<b>AGENDA ITEM:</b>	<b>6.c</b>
<b>PRESENTER:</b>	<b>Larry Bagshaw</b>
<b>SUBJECT:</b>	<b>Secretary's report</b>

**RECOMMENDED MOTION/ACTION: None, Information only**

### **BACKGROUND/DISCUSSION:**

First thought about the prayer being offered at the beginning of this meeting. Do you realize that due to prayers being offered in this meeting, we have been the recipients of plentiful precipitation this winter and also less contention in previous meetings. A certain former board member requested that we discontinue having prayers during the time he served on the board.

I joined the board because of the recall in June 2014 and it took at least 6 months for most of the new board members to figure out what they needed to do and what was going on with the management company who was only willing to put band-aids on the system and not fix it and the accountant who was embezzling from the district.

For those of you who are talking about recalling the board members. Are you aware that it takes a petition with several hundred signatures to do a recall and then an election? Do you realize that PSWID has to pay for any election out of its budget? Do you have enough people willing to run to replace the board members? If so, where were you last summer when it was time to file to run for the board when there were three openings? As to the idea of the county taking over the district, the last time they did nothing was accomplished and one time they drained all the funds without any meetings or minutes.

Many of our board members have worked long and hard to manage the district and feel like we have made a lot of progress in the last 6 years. We have been pressed hard to find a manager who will actually manage the employees and not let them override his decisions, ask other employees to track their co-workers so they could be backstabbed, or is willing to discipline the workers under them. How many of our 3000 plus customers will be pleased to find out that they are facing problems that will be created by a brand new board who has no idea what it takes to manage the district, just because a few of you are buying into the stories you are hearing from a disgruntled former short term board member who really has no idea about the history of the district and running it (compared to his experience in a well-funded, extremely large, employee managed sanitary district that he served on the board) and started raising a ruckus after not being appointed chairman in January, from disgruntled ex-employees some of who truly deserved to be terminated, and realtors/developers who want to build over 200 new units and don't really care what that many new customers will do to the system.

A certain realtor who has a podcast had an “expert” appear on it who said that we should tap into the Coconino Sandstone on top of the rim for our water supply. I am a geologist and will challenge him to prove that the water from the Coconino Sandstone is viable for us also considering the challenge of drilling in the national forest.

Do you realize that Sharon Hillman has spent nearly every working day in the office to apply for the WIFA and USDA loans, jump through the bureaucratic hoops to provide all the documentation required, and is currently making sure the district and the contractors are complying with all the requirements to receive the money? It isn't just given to us. We will lose the funds for our water line replacement projects and other improvements if someone is not making sure all the i's are dotted and the t's crossed. Is someone willing to step up to volunteer their time to do this? The district's office employees don't have time and aren't willing to do it.

If you have CONSTRUCTIVE suggestions that are financially feasible, we would be glad to hear them. We are not looking to be a target of a witch hunt.

**FINANCIAL IMPACT: Loss of WIFA/USDA funds**