RESOLUTION NO. 110-85

A RESOLUTION OF SETTLEMENT OF AND
ORDERING PAYMENT OF CLAIMS

PINETOP LAKES COUNTY IMPROVEMENT DISTRICT

RESOLVED, by the Board of Directors of the Pinetop Lakes County Improvement District, Navajo County, Arizona, that

WHEREAS, said Board has conducted proceedings pursuant to its Resolutions of Intention Nos. 71-1, 71-13, 72-20, 73-16 and 74-34, adopted November 1, 1971, December 7, 1971, March 14, 1972, September 13, 1973 and December 3, 1974, respectively, to acquire and construct road, drainage, water, sanitary sewer and electric improvements as authorized by Article 1.1, Chapter 5, Title 11, Arizona Rev. Stats., known as the County Improvement District Law;

WHEREAS, said proceedings, designated Project Nos. 71-1, 71-2, 72-1, 73-1 and 74-1, respectively, were conducted on the basis of verified petitions signed by the owners or the agents or attorneys-in-fact of the owners of all of the real property proposed to be included in the respective assessment districts upon which the costs and expenses of the respective improvements were proposed to be charged;

WHEREAS, said proceedings were conducted substantially as petitioned for, with provision for the filing of written protests by the owners of property within each such assessment district against the improvements or the assessment district, and by owners and other persons as to the legality of the assessment or any of the proceedings;

WHEREAS, a public hearing at which such protests and objections would be heard by the Board was established for 2:00 o'clock P.M., December 7, 1971; 10:00 o'clock A.M., January 18, 1972; 10:00 o'clock A.M., May 9, 1972, 11:00 o'clock A.M., October 23, 1973; and 11:00 o'clock A.M., January 7, 1975, respectively, at the Supervisor's Chambers, Courthouse, Holbrook, Arizona, and notice thereof was duly given by publication and by posting, and by mailing to the owners of real property within the respective assessment district, as their names and addresses appeared on the last equalized county tax roll or as known to the Clerk, within the time and manner provided by law;

WHEREAS, the hearing scheduled for January 7, 1975, having been continued until 2:00 o'clock P.M. on January 14, 1975, with notice of such continuance having been duly given, the Board met at the scheduled times and place for the purpose of consideration of all protests and hearing any persons interested in the premises,

no persons interested or otherwise filed any protest to the proposed improvements, to the extent of the assessment districts, to the respective assessments, or to any other matters whatsoever, or raised any objection to any of said matters or at all, except that the owners of one lot in Project No. 71-1 informed the Board that the proposed assessment of such lot should be paid in cash by another, and said Board fully considered all matters, became authorized to order the work and improvements, and acquired jurisdiction further to proceed in all respects.

WHEREAS, on said respective dates of hearing the Board adopted its Resolution Nos. 71-8, 72-1, 72-21, 73-17 and 75-3, respectively, pursuant to each of which said Board made the findings as to notices, protests and hearings, adopted the Engineer's reports for the respective projects, confirmed the respective assessments and ordered the improvements described in the respective Resolutions of Intention, all in conformity with the various petitions, and thereby finally and conclusively bound all persons entitled to object as to all errors, informalities and irregularities which said Board might have remedied or avoided at any time during the progress of the respective proceedings;

WHEREAS, also on said respective dates of hearing, the respective assessments and diagrams were recorded in the Office of the Superintendent of Streets, and notice of the recordation of each of the same and the right to pay the assessments or any part thereof was given by publication and by mailing to the owners of real property assessed, as aforsaid, within the time and manner provided by law, and no person having presented to the Superintendent of Streets an affidavit and evidence that such person was the owner of any lot or parcel assessed and a written notice that such person desired that no improvement bond be issued for such assessment, on August 29, 1972, (as respects both Project Nos. 71-1 and 71-2), August 16, 1973, December 4, 1973, and January 14, 1975, respectively, certifications were made to the Clerk by the Superintendent of Streets as to the assessments remaining unpaid, as follows: Project No. 71-1, $1,279,946; Project No. 71-2, $425,887; Project No. 72-1, $624,474; Project No. 73-1, $681,706, and Project No. 74-1, $290,860;

WHEREAS, certain changes and modifications in three of the respective projects were duly ordered pursuant to law and on August 1, 1973, revised assessments and diagrams were recorded in the Office of the Superintendent of Streets and notice of the recordation of each of same and the right to pay the assessments or any part thereof having been waived by the owners of all of the real property whose

BOOK 805 PAGE 840

assessments were changed, and no person having presented to the Superintendent of Streets an affidavit and evidence that such person was the owner of any lot or parcel assessed and a written notice that such person desired that no improvement bond be issued for such assessment, in the case of Project No. 71-1, on December 4, 1973, and in the case of Project Nos. 71-2 and 72-1, on August 16, 1973, certifications were made to the Clerk by the Superintendent of Streets as to assessments remaining unpaid, in the amounts of, respectively, $1,625,179, $522,961 and $857,991;

WHEREAS, subsequent to confirmation of and recordation of the assessment and certification thereof to the Clerk, improvement bonds with respect to each project were issued in several series, aggregating in principal amount as follows: Project No. 71-1, $1,340,000; Project No. 71-2, $440,000; Project No. 72-1, $770,000; Project No. 73-1, $610,000; and Project No. 74-1, $240,000;

WHEREAS, the improvements under each proceeding were made under separate agreements with the petitioners for the respective assessment districts, by means of contracts by this District to acquire such improvements upon completion, which contracts were duly entered into after notice of intention with respect thereto was published as provided by law, at the time of publication, the owners of property within the respective assessment districts had personal knowledge of the intention of this Board with respect to said contracts, no person interested or otherwise, including the owner or agent or attorney-in-fact for all owners, within 15 days thereafter or at all filed with the Clerk a written notice specifying in what or any respect the acts and proceedings were irregular, illegal or faulty, and no matter existed directly affecting the authority of the Board respecting said acts and proceedings;

WHEREAS, to the extent that there were insufficient funds provided by means of said assessment proceedings to acquire all work and improvements, the petitioners were obligated under the respective petitions to provide and pay for all such work and improvements;

WHEREAS, in the administration of the various proceeds, both cash and improvement bond sale proceeds, received by the District pursuant to the respective proceedings, two consolidated construction funds were ordered established, which were subsequently administratively combined into one upon the acquisition by one of the two petitioners of the other's interest;

WHEREAS, subsequently, petitoners made certain changes in the work and

BOOK 805 PAGE 841

improvements and completed the same to the satisfaction of the entities proposed to maintain and operate them, as evidenced by hearings held concerning completion;

WHEREAS, a public hearing was commenced on December 13, 1983 for the purpose of finalizing the District proceedings, which hearing was subsequently continued by the Board of Supervisors of Navajo County, acting as the Board of Directors of the Pinetop Lakes County Improvement District, who requested that an independent examination of the financial affairs of the District be had;

WHEREAS, such independent examination of the financial affairs of the District was had and said public hearing is herewith being re-opened;

WHEREAS, the County Treasurer has advised that all improvement bonds issued for the various projects have now matured and have been paid, and there remains a prospective balance of funds in the consolidated bond fund for the respective projects of approximately $33,000, representing funds previously transferred to the bond fund from the construction fund during 1975, and consisting of approximately $29,400 in cash and approximately $3,700 which remains to be collected by regular proceedings for the collection of delinquent assessment installments;

WHEREAS, there presently remains no funds in the consolidated construction fund for the respective projects as a result of funds previously transferred to the bond fund in 1975 and $8,530 of the funds in the construction fund having been used for the benefit of the Pinetop Lakes Sanitary District;

WHEREAS, all amounts due from construction funds have been paid with the exception of amounts owed the bond counsel and the accounting consultant for the projects and the Pinetop Lakes Sanitary District;

WHEREAS, representatives of the firms of Wilson, Morton, Assaf & Mc Elligott, bond counsel, and Lawerence J. Petersen, C.P.A., accounting consultant, and the Pinetop Lakes Sanitary District have heretofore met and discussed their various outstanding claims against the Pinetop Lakes County Improvement District and have agreed that their respective claims each be reduced to an amount equal to one third of the remaining funds available in the District's bond fund and construction fund and that such available amounts be accepted in full and complete settlement of their respective claims; and

WHEREAS, no other claims have been presented against the District and none are known to exist;

BOOK 805 PAGE 842

NOW, THEREFORE, IT IS RESOLVED AND ORDERED as follows:

1. All amounts presently or prospectively (by collection in due course of assessment installments not yet collected) in the consolidated bond fund for Projects Nos. 71-1, 71-2, 72-1, 73-1, and 74-1 of the District, shall be transferred to the consolidated construction fund, upon receipt by the County Treasurer as to amounts not yet received, and otherwise upon receipt of this order by the County Treasurer, such surplus bond funds having previously been advanced from the construction fund in order to assure the payment of improvement bonds and the interest thereon on a current basis because of a temporary shortage of cash assessment installment collections.

2. All amounts presently or prospectively (upon the collection by the County Treasurer of assessment installments not yet collected as referred to in Paragraph 1) in the consolidated construction fund for Projects Nos. 71-1, 71-2, 72-1, 73-1 and 74-1 of the District shall be paid to Wilson, Morton, Assaf & Mc Elligott, bond counsel, to Lawerence J. Petersen, accounting consultant, and to the Pinetop Lakes Sanitary District, as follows:

Payee	Amount
Wilson, Morton, Assaf & Mc Ellifott	$ 13,876.78
Lawerence J. Petersen	13,876.78
Pinetop Lakes Sanitary District	Balance

which balance, as to Pinetop Lakes Sanitary District, is estimated to be no less than $13,876.79, less a credit for $8,530.00 previously paid, and may exceed that amount to the extent of investment earnings on all such funds until the final payment of such funds is made.

3. It is presently estimated that of the amounts ordered to be paid by Paragraph 2, the following amounts either have been or can presently be paid in cash to each such Payee:

Payee	Amount
Wilson, Morton, Assaf & Mc Elligott	$ 13,876.78
Lawerence J. Petersen	13,876.78
Pinetop Lakes Sanitary Disrict	
Previously paid	$ 8,530.00
Cash presently available for payment	1,601.57

No payments shall be made to any of the Payees until the County Treasurer has sufficient funds on hand as provided by this order to pay each such Payee the amounts payable as estimated in this paragraph 3, and at the time that such sufficient funds are available, such amount shall be paid to each Payee; thereafter,

amounts due under paragraph 2 shall be paid to the said Pinetop Lakes Sanitary District, from funds in the construction fund or otherwise as funds are received, and no further amounts shall be paid Wilson, Morton, Assaf & Mc Elligott or Lawerence J. Petersen.

4. Such initial funds payable to the Payees identified in Paragraph 3 shall be paid by the County Treasurer by check or warrant, following receipt of a duly executed demand for payment by Payees, without further order of this Board, and thereafter, as funds become available, said County Treasurer shall transfer said available funds to the Pinetop Lakes Sanitary District Operating Fund (Account Number 460), and shall provide to the Board of Directors of the Pinetop Lakes Sanitary District, an accounting of the funds on deposit at the date of this order for payment and of the funds subsequently received which are subject to this order for payment.

5. The Payees identified in Paragraph 2 and 3 shall receive payment under this order for payment under the condition that the respective Payees waive any and all claims that the respective Payees have or might have other than as provided for by this order for payment and that each of them accept the payment or payments ordered hereby as and for all amounts due and that might otherwise be due to each of them for services rendered or otherwise with respect to this District and Project Nos. 71-1, 71-2, 72-1, 73-1 and 74-1 identified herein, and on the face of the first demand for payment each Payee shall specifically acknowledge receipt of a copy of this Paragraph 5, and shall specify that the resulting check or warrant shall be tendered upon the express condition that presentation for payment constitutes the waiver and acceptance provided for by this Paragraph 5 without any further act.

6. In the event the delinquent assessments are not paid by the time the payment of the first installment of 1985 taxes becomes delinquent, the County Treasurer shall report such fact to this Board, together with the identification of each of the properties delinquent in their assessment installments and the amounts thereof, and this Board shall institute summary sale of such properties pursuant to Section 35-481, et seq., Arizona Rev. Stats., or undertake other appropriate proceedings for the expeditious collection of the delinquent assessments.

7. The public hearing of December 13, 1983 is hereby closed and, all claims having been settled as provided for by this resolution, Projects Nos. 71-1, 71-2, 72-1, 73-1 and 74-1 of this District are hereby declared completed and closed.

* * * * * * * *

BOOK 805 PAGE 844

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Directors of the Pinetop Lakes County Improvement District, Navajo County, Arizona, on the 26th day of November, 1985, by the following vote:

AYES, and in favor thereof, Directors: Johnny L. Butler, Chairman
Pete Shumway, Member
Percy Deal, Member

NOES, Directors: None

ABSENT, Directors: None

Sharon K. Kearns
Clerk of the Board of Supervisors
as ex officio Clerk of the
Board of Directors of the
Pinetop Lakes County
Improvement District

MICROFILMED
INDEXED

85 18860

RECORDED AT THE REQUEST OF
Navajo County Board of Supervisors
November 27 A. D. 19 85 AT 4:00 O'CLOCK P M.
IN DOCKET 805 PAGES 839-845, Inclusive
RECORDS OF NAVAJO COUNTY, ARIZONA
JAY H. TEALY RECORDER
BY Laurette Justman DEPUTY

NAVAJO COUNTY RECORDER NAVAJO CO., STATE OF ARIZONA