

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/03/2004

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4(Consolidated)

FILED: August 11, 2004

In Re the General Adjudication
of All Rights to Use Water in
The Gila River System and Source

MINUTE ENTRY

A status hearing was held on July 1, 2004, to consider the applications of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District (collectively "SRP") for provisional injunctive relief against Henry M. Shill and Don H. Shill, dba Shield Ranch, Inc., Kovacovich Investment Ltd. Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, First American Title Trust 4693, Linda S. and Paul R. Robinson, Chester-Campbell, L.L.C., NBJ Ranch Ltd. Partnership, Josephine C. Leslie and Verde River Ranch, L.L.C. The Cities of Phoenix and Tempe filed memoranda in support of SRP's applications. Other claimants, most notably, the City of Casa Grande, the Roosevelt Water Conservation District, a group of cities and towns referred to as the "Verde Valley Communities," and several irrigation districts referred to as the "Upper Valley Irrigation Districts" and the "Central Valley Irrigation Districts"¹ filed a memorandum

¹ The "Verde Valley Communities" include the Cities of Sedona and Cottonwood and the Towns of Jerome and Clarkdale. The "Upper Valley Irrigation Districts" include the Gila Valley Irrigation District and the Franklin Irrigation District, while the "Central Valley Irrigation Districts" are

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in support of SRP's requests only to the extent the relief requested would not require the Court to consider the extent of the subflow zone within the Verde River Watershed.

Respondents² oppose SRP's request to have its applications heard for three substantive reasons: 1. the applications are barred by the doctrine of laches; 2. the relative harm to other claimants in the adjudication outweighs SRP's need for relief; and 3. considering the merits of SRP's applications will divert the Court from its original mission of adjudicating water rights by initiating a series of provisional remedy hearings.³

Respondents Don H. Shill, Henry M. Shill, dba Shield Ranch, Inc. argue both that this Court does not have the inherent authority to grant provisional injunctive relief, and that considering SRP's applications would be contrary to the intent of the McCarran Amendment, 43 U.S.C. § 666.

Respondent NBJ Ranch Limited Partnership asserts that its dispute with SRP must be heard in a Yavapai County division of the Superior Court due to the existence of a prior judgment of that Court concerning its water rights.

At the hearing, the Court informed the parties it rejects the notion that the adjudication court does not possess the

comprised of the Maricopa-Stanfield Irrigation and Drainage District and the Central Arizona Irrigation and Drainage District.

2 Several named respondents, including Linda S. Robinson, Paul R. Robinson, Chester-Campbell, L.L.C., Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, and Myron Ray did not file responses or appear at the status hearing.

3 In a letter dated July 7, 2004, SRP notified the court it is no longer seeking relief against respondent First American Title Trust No. 4693. SRP indicated in its July 7, 2004, letter that now that First American Title Trust No. 4693 is not involved SRP will amend its application to include the owners of the properties formerly listed as First American Title Trust No. 4693.

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authority to order injunctive relief. The Court also does not believe that, in this instance, holding hearings to determine whether provisional relief should be ordered would violate the grant of authority supplied by the McCarran Amendment. And in light of the fact there is only one Superior Court in Arizona, this division does not believe it is compelled to refrain from considering issues arising in this adjudication between parties to other state court judgments or litigation concerning water rights pending outside Maricopa County.

At the status hearing, a great amount of time was spent obtaining an avowal from SRP as to the scope of the relief requested. The Court is committed to ensuring that neither SRP nor any other claimant can avoid the general adjudication process and obtain judicial determination of the extent and priority of competing water rights claims on a preferential basis. The court will not consider a request for provisional relief that requires it to decide factual or legal matters that might be used as precedent for resolving disputes involving claimants that will not be parties to the hearings on SRP's applications.

The court made clear that it would only consider setting a hearing on SRP's requests if SRP affirmed that it intends, as part of its efforts to demonstrate entitlement to a provisional remedy, to establish that the respondents do not possess colorable water right claims. There was a great deal of discussion during the hearing as to what constitutes a "colorable claim." For purposes of SRP's applications, a "colorable claim," at a minimum, includes water rights claims existing prior to and after June 12, 1919, for which relevant filings or documentation were on file with the Arizona Department of Water Resources prior to the date SRP filed the applications.

The court indicated that should these matters proceed and the court subsequently finds there was not a good faith basis to

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assert that a respondent does not hold a colorable water rights claim, appropriate relief would be granted to any affected party.

Based upon SRP's avowal regarding the scope of the requests set forth in its applications for provisional injunctive relief,

IT IS ORDERED granting SRP's request for evidentiary hearings to consider whether provisional injunctive relief should be granted against respondents. Toward this end, SRP is directed to obtain service of process on respondents Linda S. Robinson, Paul R. Robinson Chester-Campbell L.L.C., Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, and if necessary and appropriate, the owners of the properties formerly listed as First American Title Trust No. 4693.

IT IS FURTHER ORDERED, in accordance with Arizona Rule of Civil Procedure 16, a comprehensive pretrial conference shall be held on October 1, 2004 at 10:00 a.m., in the Central Court Building, Courtroom 402, 201 West Jefferson, Phoenix, Arizona. At the conference, the court will consider any outstanding discovery disputes, proposals for scheduling the evidentiary hearings to be held, and any other relevant scheduling and case management matters.

* * * *

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated October 6, 2003, and the parties listed below.

NBJ Ranch Ltd. Partnership
P. O. Box 9
Camp Verde, AZ 86322

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c/o Betty Chester & Dowling Campbell
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Kovacovich Investment Limited Partnership
c/o George Kovacovich
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Camp Verde, AZ 86322

Josephine C. Leslie
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Paradise Valley, AZ 85251

Verde River Ranch, LLC
c/o Richard W. MacMillan
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c/o Hahn Howard & Greene, LLP
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Shield Ranch; Don & Henry Shill
c/o Scott K. Riskey, P.C.
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