

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/09/2010

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M. Wetherell
Deputy

COPY

FILED: 04/13/2010

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

W-1, W-2, W-3, W-4 (Consol.)

In Re Salt River Project's Application for
Order to Show Cause and Request for
Injunction Against Wiertzema Family Trust

In Re Wiertzema Family Trust's
Motion for Award of Attorney's Fees,
Expert Witness and Consultant Fees

MINUTE ENTRY

The Court has considered Wiertzema Family Trust's (the "Trust") request for an award for attorney's, expert witness and consulting fees incurred in connection with Salt River Project Agricultural Improvement and Power District's and Salt River Valley Water User's Association's (collectively "SRP") failed attempt to obtain injunctive relief against the Trust.

The Trust possesses a strong equitable argument for recovery. It was forced to spend years in costly litigation over what turned out to be an unsupportable claim for injunctive relief. If the matter was governed by equity alone, the Court would enter a substantial award. But here an award can only be entered if there are legal grounds to

support relief and none of the principles or statutes relied upon by the Trust survive even a cursory review except for the claim that an award is required pursuant to A.R.S. § 12-349. The Court finds that each of the other alleged grounds for a fee award is not supported by Arizona law.

Has the Trust established a right to an award under § 12-349 (1)? Specifically, were SRP's efforts in obtaining its desired injunction undertaken without "substantial justification"? Subsection (F) of the statute guides this determination by defining the phrase "without substantial justification" as referring to situations in which one asserts a claim or defense that: 1. constitutes harassment; 2. is groundless; and, 3. is not made in good faith.

This Court has considered the application of A.R.S. § 12-249 (1) before and has always found the last requirement listed in Subsection (F) as a formidable hurdle for those requesting awards. But the history of this proceeding, in which the Court mandated strict limits on the type of litigation that would be permitted to proceed, indicates that an award may be appropriate. To make this determination, the Court requires additional information. Therefore,

IT IS ORDERED setting oral argument on the Trust's request for an award of fees for **June 21, 2010, at 10:00 a.m.** (one hour allotted) before:

The Honorable Eddward P. Ballinger, Jr.
Superior Court of Arizona
Juvenile Court Center - Durango Facility
3131 W, Durango - Courtroom 6
Phoenix, AZ 85009

602-506-8551

IT IS FURTHER ORDERED directing each counsel to file a memorandum (not to exceed ten (10) pages) by **June 14, 2010**, addressing the following questions:

1. What was SRP's original basis for asserting that the Trust lacked a colorable water right claim?
2. Upon what investigation was SRP's original position based?
3. What statements are in the record regarding SRP's original position?
4. When did SRP learn that its original position was incorrect (if it was incorrect)?

A copy of this order is mailed to all parties on the Court-approved mailing list for the Gila River Adjudication W-1, W-2, W-3, W-4, dated January 20, 2010.