

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/15/2009

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R.Tomlinson
Deputy

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

FILED: 05/05/09

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

In Re Salt River Project's
Applications for Orders to Show
Cause and Requests for
Injunctions Against Kovacovich
Investment Limited Partnership,
Wiertzema Family Trust, and NBJ
Ranch Limited Partnership

In Re NBJ Ranch Limited
Partnership's Motion for Summary
Judgment with Joinders from
Freeport-McMoRan Corporation,
Arizona Public Service and
Roosevelt Water Conservation
District

In Re Kovacovich Investment Ltd.
Partnership and Wiertzema Family
Trust's Motion to Dismiss or in
the Alternative Motion for Summary
Judgment

MINUTE ENTRY

Courtroom 112 – Northeast Regional Court Center

9:08 a.m. This is the time set for Oral Argument on 1) Salt River Project's Applications for Orders to Show Cause and Requests for Injunctions Against Kovacovich Investment Limited Partnership, Wiertzema Family Trust, and NBJ Ranch Limited Partnership, 2) NBJ Ranch Limited Partnership's Motion for Summary Judgment with Joinders from Intervenors Freeport-McMoRan Corporation, Arizona Public Service (APS), and Roosevelt Water Conservation District (RWCD), and 3) Kovacovich Investment Limited Partnership and Wiertzema Family Trust's Motion to Dismiss or in the Alternative Motion for Summary Judgment. Present are:

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Jenny J. Winkler, L. William Staudenmaier, and Cynthia M Chandley on behalf of Freeport-McMoRan, Roosevelt Water Conservation District, and Arizona Public Service; M. Byron Lewis and Jeffrey Ehlers on behalf of the Salt River Project ("SRP"); L. Richard Mabery on behalf of Kovacovich Investment Limited Partnership and Wiertzema Family Trust; Douglas E. Brown and David A. Brown on behalf of NBJ Ranch Limited Partnership; Richard T. Burtell on behalf of the Arizona Department of Water Resources; Charlotte Benson on behalf of the City of Tempe; Douglas C. Nelson on behalf of the Lower Gila Water Users; Joe P. Sparks and Laurel A. McElhaney on behalf of the Tonto Apache Tribe, San Carlos Apache Tribe, and Pascua Yaqui Tribe; Robyn L. Interpreter on behalf of the Yavapai Apache Nation; and M. James Callahan on behalf of the City of Phoenix. Special Master George A. Schade, Jr. and his assistant Barbara K. Brown are present.

Court reporter, Hilda Lopez, is present as well as a record of the proceedings being made by CD/videotape.

The Court provides clarification to the Intervenors that the forthcoming evidentiary hearing is for the narrow purpose of considering SRP's request for provisional relief against Kovacovich Investment Limited Partnership, Wiertzema Family Trust, and NBJ Ranch Limited Partnership and that there will be no final "subflow determination" made.

Discussion is held with Mr. Staudenmaier and Mrs. Winkler with respect to the parties' pretrial statement, specifically as it relates to the Intervenors' anticipated participation in the evidentiary hearing. The Court is advised and approves of the Intervenors' limited participation in the hearing.

Mr. Lewis, counsel for SRP, affirms that the purpose of its request for preliminary injunction is to enforce the existing injunctions entered by the Yavapai County Superior Court.

Mr. Douglas E. Brown and Mr. Lewis present argument to the Court with respect to NBJ Ranch Limited Partnership's Motion for Summary Judgment and the joinders thereto.

Based upon the arguments presented,

IT IS ORDERED denying NBJ Ranch Limited Partnership's Motion for Summary Judgment and the joinders thereto.

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Mr. Mabery and Mr. Lewis present argument to the Court with respect to Kovacovich Investment Limited Partnership and Wiertzema Family Trust's Motion to Dismiss or in the Alternative Motion for Summary Judgment.

After considering the arguments of counsel, the Court finds that the only relevant factor for the purpose of the forthcoming evidentiary hearing is whether or not the Kovacovich Investment Limited Partnership and Wiertzema Family Trust are in violation of the injunctive relief originally ordered by the Yavapai County Superior Court. For that reason,

IT IS ORDERED denying the Motion to Dismiss or in the Alternative Motion for Summary Judgment.

11:13 a.m. Matter concludes.

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 (Consolidated), dated January 23, 2009.