

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/22/2009

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M. Wetherell
Deputy

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

FILED: 3/25/2010

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

COPY

In Re Salt River Project's
Application for Injunctive Relief
Against NBJ Ranch Limited
Partnership

MINUTE ENTRY

The Court has considered the Salt River Project Agricultural Improvement and Power District's and Salt River Valley Water User's Association's (collectively "SRP") request for a provisional remedy in the form of an injunction against NBJ Ranch Limited Partnership ("NBJ").

The memoranda filed by NBJ and the intervenors indicate they believe the hearing on SRP's motion for provisional relief involved determination of the means by which the subflow zone will be determined for the Verde River Watershed. This belief is mistaken. SRP asserts that the hearing was one charged with the simple task of enforcing an existing injunction. That position is also incorrect. The Court focused only on whether SRP could establish entitlement to a provisional remedy pending final resolution of the parties' disputes. Consideration of subflow issues was cursory in that the Court only considered evidence from two parties in an attempt to determine whether, as to these parties and no others, SRP carried its burden.

NBJ spent much of the hearing criticizing the methods and modeling used by SRP to support the claim that NBJ is improperly diverting non-de minimis amounts of Verde River subflow. When opining that subflow was being diverted, SRP's expert witness, Jon R. Ford, acknowledged that a number of evaluative tools and methods were not used. When the Verde River subflow zone is mapped, testing tools, modeling methods and other analytical tools not employed by SRP's expert may well be required. But

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/22/2009

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M. Wetherell
Deputy

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

this fact does not affect the issue of SRP's entitlement to relief in this case.

The evidence presented established that SRP satisfied its burden for *provisional* relief if only legal issues are considered. Here the Court must also consider the equities, including the fact that provisional remedies based upon a finding of a "likelihood" of success on the merits are typically granted when final resolution will be reached in the foreseeable future. In this case, the time until a final judgment will be entered is indeterminate.

The process of weighing the equities in this case is made more complicated due to SRP's position that it is a political subdivision of the State of Arizona and, therefore, is not required to post a bond as a condition to obtaining relief even if the Court determines one is needed to protect NBJ's interests. NBJ asserts that a substantial bond is required for relief to be granted and the amount of the bond should be based upon the assumption that the merits will not be decided for fifty (50) years. If SRP's position correctly reflected current law, the Court would find that the extreme hardship imposed upon NBJ would dictate that SRP's request be denied.

The Court concludes that under the circumstances present in this adjudication, SRP is required to post a bond to obtain relief, but the Court can mitigate the need for an extremely large bond by setting a review hearing to determine if relief should continue or the bond amount modified. Based on the foregoing,

IT IS ORDERED:

1. Granting SRP's request for relief on the terms set forth below;
2. Conditioning relief upon the filing of a cash bond in the sum of \$75,000;
3. Setting a review hearing to determine if relief should continue or the bond amount be modified for **May 4, 2012, at 10:00 a.m.**, in this division;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/22/2009

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M. Wetherell
Deputy

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

4. Directing counsel for SRP to file and serve a form of judgment consistent with the order on or before April 16, 2010. NBJ shall have ten (10) judicial days after service to file an objection to SRP form.

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 20, 2010.