

1 briefs and conducting oral argument, the Court issued a minute entry on September 6, 2006,
2 granting summary judgment in favor of SRP on its application. SRP having submitted a
3 proposed form of injunction and Shield Ranch having had an opportunity to present any
4 comments or objections, the Court hereby issues its order entering an injunction pursuant to
5 A.R.S. § 12-801(1) and Rule 65(h) of the Arizona Rules of Civil Procedure.

6 **FINDINGS OF FACT**

7 In a stipulation submitted to the Court on August 5, 2005, the Parties agreed to the
8 substance and accuracy of the following facts, which are adopted herein as the Court's
9 findings of fact:

10 1. In Statements of Claimant ("SOCs") Nos. 39-50053 (as amended), 39-50054 (as
11 amended), and 39-50055 (as amended), SRP claims water rights to the Verde River System
12 and Source with priority dates as early as 1869. SRP has decreed rights to waters flowing in
13 the Salt River below the confluence of the Salt and Verde Rivers pursuant to the Kent Decree
14 of March 1, 1910, Maricopa County Superior Court No. 4564.

15 2. In SOC Nos. 39-45664 and 39-45666, Henry M. Shill and Don H. Shill claim
16 water rights to West Clear Creek, a tributary to the Verde River, under (i) a judgment entered
17 by the Yavapai County Superior Court on September 7, 1900, in Case No. 3013, entitled W.F.
18 Wilber, et al, v. Isaac Jones, et al, ("1900 Decree") for the property owned by J.H. Wingfield
19 as of the date of the 1900 Decree with a claimed priority date of 1868 for a portion of the
20 acreage irrigated and (ii) to groundwater, all for various uses. Henry M. Shill and Don H.
21 Shill asserted that water rights for a portion of the land claimed to be irrigated in the SOC
22 and not covered by the 1900 Decree ("Rutledge land") originate from the beneficial use of
23 water beginning no later than June 4, 1901. The Rutledge land was acquired by J. H.
24 Wingfield from the Estate of Melissa Ann Rutledge.

25 3. The land on which the water claimed by the Shills is being used has been
26 transferred to Shield Ranch, Inc. an Arizona corporation, wholly owned by the Shills, but the
27 SOC in this Adjudication are still in the name of the Shills and have not been formally

1 transferred to Shield Ranch, Inc. Shield Ranch stated that it was in the process of preparing
2 amended SOC's.

3 4. The Shield Ranch property is located south of the town of Camp Verde, near the
4 confluence of West Clear Creek and the Verde River, in Sections 21 and 22, T13N, R5E, Gila
5 and Salt River Base and Meridian.

6 5. Shield Ranch currently has approximately 137 acres under irrigation in Sections
7 21 and 22, in addition to a storage pond covering approximately 4 acres in Section 21. Those
8 137 acres and the storage pond are depicted on the map attached hereto as Exhibit 1.

9 6. Shield Ranch has "colorable claims" to water rights for approximately 109 of
10 the 137 acres it is currently irrigating and the storage pond. Those 109 acres are shown on
11 Exhibit 1, and the water right claims for those 109 acres were not at issue in the OSC Motion
12 Proceedings. The storage pond, which was constructed on historically irrigated land
13 sometime between 1946 and 1955, was also not at issue in the OSC Motion Proceedings.

14 7. Approximately 23 acres of the approximately 137 acres Shield Ranch currently
15 has under irrigation were not cultivated prior to 1934. These acres ("Disputed 23 Acres") are
16 depicted on Exhibit 1 and are described in Exhibit 2. Shield Ranch/Shill has no decreed rights
17 for the Disputed 23 Acres and has not applied to any court or governmental agency for (1) an
18 appropriative water right, or (2) a severance and transfer for the Disputed 23 Acres.

19 8. The Arizona Department of Water Resources ("ADWR") determined, based
20 upon an investigation, that approximately 22 acres irrigated by Shield Ranch may not be
21 eligible for surface water diversions from West Clear Creek. By letter dated July 9, 1992,
22 ADWR notified the owners of Shield Ranch that it believed, based solely on its own research,
23 it would be necessary for Shield Ranch to apply for a permit to appropriate water for those 22
24 acres. The 22 acres identified by ADWR represent a portion of the Disputed 23 Acres.

25 9. Shield Ranch did not apply for a permit to appropriate water for the 22 acres
26 identified by ADWR, but instead responded to ADWR by letter dated August 1, 1992
27

1 referring ADWR to its 1974 Water Rights Registration Act statement of claim for the basis of
2 Shield Ranch's belief that it has a proper right to irrigate the land in question.

3 10. The Disputed 23 Acres are located in the southern portion of the Shield Ranch
4 property, adjacent to the Verde River. The Shills contended that, at some time(s) prior to
5 1919, waste and surplus water ran over some of this acreage as those waters drained down-
6 gradient back to the Verde River channel from adjacent cultivated acreage and that a portion
7 of the Disputed 23 Acres was fenced at that time.

8 11. The Holmquist survey performed in 1934 shows the Disputed 23 Acres as
9 "Cottonwoods and Mesquite" and shows that a portion of those 23 acres were fenced at that
10 time.

11 12. Livestock may have grazed on the mesquite and grasses located on the Disputed
12 23 Acres prior to 1919.

13 13. Any waste or surplus water on the Disputed 23 Acres prior to 1919 was diffused
14 naturally over some of those acres as it drained back to the natural channel of the Verde River
15 from historically irrigated land.

16 14. In addition to the Disputed 23 Acres, there are approximately five acres
17 currently irrigated in the northeast portion of the Shield Ranch property that were not irrigated
18 prior to 1919 but on which irrigation and cultivation were initiated at some time between 1946
19 and 1955 ("Disputed 5 Acres"). The Disputed 5 Acres are depicted on Exhibit 1 and are
20 described in Exhibit 2. Neither Shield Ranch/Shill nor their predecessors in interest have
21 applied for (1) an appropriative right, or (2) a severance and transfer from any court or
22 governmental agency for the Disputed 5 Acres.

23 15. Shield Ranch has constructed a barn and other improvements on approximately
24 4 acres of land, which was historically irrigated but removed from cultivation and is no longer
25 irrigated. The approximately 4 acres surrounding the barn are all within the land legally
26 described in the 1900 Decree.

27 ...

1 CONCLUSIONS OF LAW

2 Based upon the stipulated facts and the legal arguments presented in the parties' briefs
3 and oral argument, the Court enters the following conclusions of law:

4 1. SRP has demonstrated all requisites for issuance of an injunction pursuant to
5 A.R.S. § 12-801(1) and Rule 65(h) of the Arizona Rules of Civil Procedure.

6 2. Shield Ranch does not possess a colorable claim upon which it may assert a
7 water right in this Adjudication for the Disputed 23 Acres or the Disputed 5 Acres.

8 INJUNCTION

9 WHEREFORE, IT IS HEREBY ORDERED:

10 1. Shield Ranch and its successors in interest are hereby permanently enjoined
11 from using water on the Disputed 23 Acres depicted on Exhibit 1 and described in Exhibit 2
12 and the Disputed 5 Acres depicted on Exhibit 1 and described in Exhibit 2. This injunction is
13 subject to modification under the continuing jurisdiction of this Court.

14 2. The Court hereby authorizes the recording of this Injunction in the real property
15 records of the Yavapai County, Arizona, Recorder and at such other locations where
16 recording of injunctions is authorized by applicable law.

17
18 Dated: MARCH 7, 200~~6~~⁷

EDDWARD P. BALLINGER, JR.

Hon. Eddward Ballinger, Jr.
Judge of the Superior Court

21 ORIGINAL of the foregoing, with attachments,
22 hand-delivered for filing this _____ day
23 of _____, 2006 to:

24 Clerk of the Court
25 Maricopa County Superior Court
101/201 West Jefferson
Phoenix, AZ 85003-2205

26 ...

27 ...

1 AND COPY of the foregoing, with attachments,
2 mailed this _____ day of _____, 2006 to:

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