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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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 (Consolidated)

ORDER TO ADOPT FINAL REPORT
WITH CLARIFICATIONS
AND
TO GRANT REQUEST FOR
PRELIMINARY INJUNCTION

CASE NAME: In re Applications of the Salt River Project – Verde River Watershed
HSR INVOLVED: None
DESCRIPTIVE SUMMARY: Special Water Master Harris’s final report dated October 16, 2017 and issued under Ariz. R. Civ. P 53 is adopted in full with clarifications as indicated.
NUMBER OF PAGES: 6
DATE OF FILING: October 26, 2023

FACTUAL AND PROCEDURAL BACKGROUND

In 2004, Salt River Project Water Agricultural Improvement and Power District (“SRP”) filed an Application for an Order to Show Cause (“OSC”) and requested a preliminary injunction against six (6) owners of subdivided lots in the River Ranch

1 Estates located in Section 3, T14N, R4E of the Gila and Salt River Basin and Meridian to
2 enjoin them from diverting water from the O.K. Ditch for irrigation purposes. SRP
3 asserted that the landowners had no right to the water and the diversion of water caused
4 SRP irreparable harm. *See* Special Master’s Corrected Report at 1-2, October 16, 2017
5 (“Report”). Since the initial OSC, SRP has litigated or otherwise resolved its disputes
6 regarding four of the 6 subdivided lots. This order will address the final two lots located
7 in the named River Ranch Estates, Yavapai County. After multiple property ownership
8 transfers, the landowners of Lot 2 and Lot 3 at the time these proceedings began were
9 Richard E. and Michele D. Rogers, (collectively “Rogers”) and David J. Scheier and
10 Elizabeth G. Latham-Scheier, (collectively “Scheiers”), respectively (Rogers and
11 Scheiers are collectively referred to herein as “Claimants”). A detailed chain of ownership
12 history is provided in the Report at 2, footnotes 1-3

13
14 On May 4, 2017, SRP filed for summary judgment regarding the OSC and request
15 for injunction. The Rogers filed their Responses on June 1, 2017, the Scheiers did not
16 respond. On July 12, 2017, oral argument was held on SRP’s motion and on July 29,
17 2017, SRP supplemented the record to which Claimants responded on August 10, 2017.
18 The Special Master filed her Report on October 16, 2017. Objections were filed by
19 Claimants on November 28, 2017, and SRP filed a response on January 3, 2018.

20 This action is limited in scope. First, this is an action for injunctive relief only and
21 not a substantive adjudication of water rights. A separate adjudication may occur after
22 completion by ADWR of the Hydrographic Survey Report for the Lower Verde River
23 subwatershed – a statutory prerequisite. Second, this case only addresses irrigation rights
24 and does not concern domestic water rights for Claimants’ properties. Finally, as detailed
25 by the Special Master in the Report at 3, this case does not concern all water to be diverted
26 from the Verde River through the O.K. Ditch to irrigate the Rogers’ property. This case
27 concerns all 1.63 acres of Lot 3, but only 1.08 of the 1.61 total acres (approximately 2/3)

1 of Lot 2. A detailed description of the 0.53 acres SRP is excluding from their claim is
2 included in the Report at 3, quoting Salt River Project's Supplement to the Record, (July
3 31, 2017). Nothing from the Report or this Order applies to this excluded 0.53 acres
4 described by SRP.

5
6 The filings in this matter predate the undersigned Judge's tenure on this case. The
7 undersigned Judge has reviewed the record in this case and has familiarized himself with
8 the facts, issues, and evidence contained therein.

9 **LEGAL ISSUES**

10
11 An applicant for a preliminary injunction must show: (1) a strong likelihood of
12 succeeding on the merits; (2) the possibility of irreparable injury not remediable by damages if
13 relief is withheld; (3) a balance of the equities in its favor; and (4) that public policy favors
14 granting the relief. *See, e.g., IB Property Holdings, LLC v. Rancho Del Mar Apartments, Ltd.*
15 *Partnership*, 228 Ariz. 61, 64-65 (App. 2011); *Smith v. Arizona Citizens Clean Elections*
16 *Commission*, 212 Ariz. 407, 410-411 (2006). This test is flexible and based on specific facts and
17 circumstances and is a sliding scale. *Id.* The Court will briefly address each of these factors.

18 Since SRP has moved for summary judgment on these issues, SRP must also
19 demonstrate there exists "no genuine dispute as to any material fact and the moving party
20 is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). As the Special Master
21 has demonstrated in her Report, all elements have been met by SRP.

22
23 **I. There is a strong likelihood that SRP will succeed on the merits.**

24 Claimants did not specifically object to any of the three (3) Findings of Facts or
25 four (4) Conclusions of Law as stated in the Report. Rather, Claimants simply reiterated
26 that their proffered evidence demonstrates a pre-1919 right to divert water from the O.K.
27 Ditch. The Court is unable to locate any competent evidence in the record to support
28

1 Claimants' allegations and therefore adopts the Special Master's Findings and
2 Conclusions in her Report.

3 **THE COURT THEREFORE FINDS** that this prong weighs in favor of SRP's
4 requested injunctive relief.
5

6 **II. SRP would suffer irreparable harm**

7
8 When evaluating irreparable harm for injunctive relief, a court may apply a
9 "sliding scale." *Smith*, 212 Ariz. at 410. Thus, where there is a substantial likelihood of
10 success on the merits, a party seeking injunctive relief must only show a possibility of
11 harm not remediable by monetary damages.

12 There is a limited amount of water available to the parties in the O.K. Ditch and
13 thus monetary damages would not remedy SRP's and its customers' loss of any water
14 diverted by Claimants. SRP has established that the taking of water from the O.K Ditch
15 would cause irreparable harm to SRP and to the customers serviced by SRP. Claimants
16 do not dispute that fact.

17 **THE COURT FINDS** that this prong weighs in favor of injunctive relief.
18

19 **III. Balance of the hardships**

20 Arizona has identified that the critical element in analyzing the criteria for entering a
21 preliminary injunction is the hardship to the parties. *See Shoen v. Shoen*, 167 Ariz. 58 (App.
22 1990). To meet this burden, the moving party may establish either (1) probable success on the
23 merits and the possibility of irreparable injury; or (2) the presence of serious questions and the
24 balance of hardships tip sharply in his favor. *Id.*

25 Here, the Court has already found that SRP is likely to succeed on the merits of an
26 adjudication of water rights and that SRP would suffer irreparable injury in the absence of
27 injunctive relief.
28

1 But the additional balancing of hardships also favors injunctive relief in this case.
2 If Claimants are not enjoined from diverting water from the O.K. Ditch until their
3 potential water rights are ultimately adjudicated, they would be depriving SRP of rightful
4 water for SRP customers for the next five years, at a minimum. Due to the complexity
5 of the river systems, the Arizona Department of Water Resource's (ADWR)
6 Hydrographic Survey Report, a prerequisite document to initiate a contested case in the
7 General Stream Adjudication, is not scheduled for completion until September 2028. *See*
8 W1-106, Order (Feb. 27, 2023).

9 **THE COURT THEREFORE FINDS** that this prong tilts sharply in SRP's favor.
10

11 **IV. Public Policy.**

12 Public policy generally favors the appropriation and beneficial use of the water
13 from all sources in the State of Arizona. A.R.S. § 45-141(A).
14

15 **THE COURT THEREFORE FINDS** that this prong is neutral between the
16 parties.

17 **IT IS THEREFORE ORDERED** granting SRP's request for injunctive relief and
18 enjoining Richard E. Rogers and Michele D. Rogers (collectively "Rogers") and David
19 J. Scheier and Elizabeth G. Latham-Scheier (collectively "Scheiers"), and subsequent
20 owners of their respective properties, from diverting water from the O.K. Ditch to irrigate
21 their respective properties unless and until further order of this Court. However, nothing
22 in this order prevents the Rogers from diverting water from the O.K. Ditch to irrigate that
23 0.53 acre of land described on page 3 of the Report.
24

25 **IT IS FURTHER ORDERED** nothing in this report is meant to impact or alter
26 Claimants' domestic water rights.
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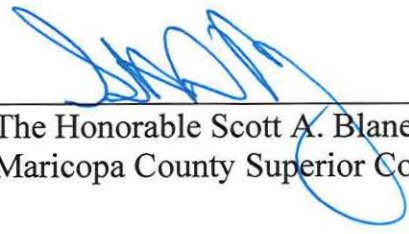
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IT IS FURTHER ORDERED adopting the Special Master’s Report in its entirety and the Findings of Fact and Conclusions of Law set forth in the Report.

IT IS FURTHER ORDERED granting SRP’s Motion for Summary Judgment. Claimants have produced no competent evidence to support a potential water rights claim, either pre-1919, post-1919, or through any valid severance and transfer. There are no genuine issues of material fact and SRP is entitled to judgment as a matter of law on the discrete issues addressed herein.

IT IS FURTHER ORDERED adopting the technical changes proposed by SRP in Section VI of SRP’s January 2, 2018, Response to Objections to Special Master’s Report. These corrections are to clarify the record only and do not affect the merits of the Report in any way.

Dated: 10/26/2023



The Honorable Scott A. Blaney
Maricopa County Superior Court

10/26/23
On ~~DATE~~, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case.

