

The Court held an Order to Show Cause (“OSC”) hearing in this matter on January 22, 2008. At the conclusion of that hearing, the Court requested that Belsher and SRP submit a proposed form of injunction pursuant to its rulings at the OSC hearing.

The Court has considered the objections to the proposed form of injunction filed by Golder, which are overruled except as incorporated herein. The Court hereby issues its injunction pursuant to A.R.S. § 12-801(1) and Rule 65(h) of the Arizona Rules of Civil Procedure.

FINDINGS OF FACT

The Court hereby makes the following factual findings based upon the evidence admitted at the OSC hearing:

1. On January 10, 1917, R.M. Grantham, the owner of Grantham Ranch, filed a “Notice of Location – Water Right” for domestic, irrigation, and stock water use from Greenback Creek.
2. Greenback Creek flows, in part, through Grantham Ranch. Greenback Creek flows into Tonto Creek, which flows into Roosevelt Lake.
3. The patent documents filed by Mr. Grantham with the United States General Land Office in 1915 refer to farming and an irrigation ditch on the parcel but make no mention of a pond, reservoir, or other water storage facility.
4. A portion of the Grantham Ranch is at issue in this OSC proceeding. That property was owned by several different individuals subsequent to Mr. Grantham, including Archie Speers and Edward Kilby.
5. The property was subsequently divided and sold to different owners.
6. The property referred to herein as the “Belsher Parcel” has been designated by the Gila County Assessor as Assessor’s Parcel No. 201-19-002J.

7. The property referred to herein as the “Golder Parcel” has been designated by the Gila County Assessor as Assessor’s Parcel No. 201-19-001C.

8. Golder purchased the Golder Parcel on or about April 12, 1994.

9. Belsher purchased the Belsher Parcel on or about June 16, 2005.

10. Between 2005 and the fall of 2007, Golder repeatedly blocked the irrigation ditch and diverted water from the irrigation ditch in order to fill a pond (“Golder Pond”) on the Golder Parcel.

11. The Golder Pond did not exist at the time of the January 10, 1917, R.M. Grantham “Notice of Location - Water Right” filing.

12. Mr. Speers filed Statement of Claim No. 36-10978 pursuant to the Arizona Water Rights Registration Act, §§ 45-181 to -190, on November 19, 1976. Mr. Speers owned both the Golder Parcel and the Belsher Parcel at the time of that filing. Mr. Speers’ Statement of Claim makes no mention of a pond, reservoir, or other water storage facility on the property.

13. Mr. Speers filed Statement of Claimant No. 39-000312 in this Adjudication on March 20, 1979. Mr. Speers owned both the Golder Parcel and the Belsher Parcel at the time of that filing. Mr. Speers’ Statement of Claimant makes no mention of a pond, reservoir, or other water storage facility.

14. The Golder Pond was first constructed in 1980, and water was first stored in the pond in that year.

15. Mr. Kilby filed Application to Appropriate No. 33-84220 on May 7, 1980. Mr. Kilby owned both the Golder Parcel and the Belsher Parcel at the time of that filing.

16. SRP filed a protest to Application to Appropriate No. 33-84220 on October 27, 1980.

17. An administrative hearing on Mr. Kilby’s Application to Appropriate and SRP’s protest was set for March 4, 1981.

18. Mr. Kilby filed Statement of Claimant No. 39-11388 in this Adjudication on February 18, 1981. Mr. Kilby owned both the Golder Parcel and the Belsher Parcel at the time of that filing. Mr. Kilby's Statement of Claimant refers to a water storage reservoir on the property. That filing states that the reservoir was constructed in 1980 and that water was first stored therein in February 1980. Mr. Kilby's Statement of Claimant lists two legal bases for his water right: (a) a 1917 right based upon the Grantham "Notice of Location – Water Right" and (b) a new right based upon Application to Appropriate No. 33-84220.

19. Application to Appropriate No. 39-84220 was withdrawn or canceled on March 2, 1981, two days before the scheduled hearing.

20. During a scheduling conference in this matter and also during the OSC hearing, Golder and his counsel agreed that Golder would not in the future take any action to block the irrigation ditch running on to the Belsher Parcel or to otherwise prevent water from reaching the Belsher Parcel.

21. Golder testified that, at various times since purchasing the Golder Parcel in 1994, he has irrigated a portion of the Golder Parcel for use as a dog agility course, in two ways: (1) by diverting water from the irrigation ditch into the Golder Pond and allowing overflow from the pond to irrigate the Golder Parcel and (2) by irrigation resulting from overflow out of the irrigation ditch that brings water to the Belsher Parcel. Golder did not testify as to any other irrigation or water use on the Golder Parcel.

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

CONCLUSIONS OF LAW

Based upon the legal arguments presented in Belsher's Application and SRP's Joinder and the evidence admitted at the OSC hearing, the Court enters the following conclusions of law:

1. SRP and Belsher have demonstrated all requisites for issuance of an injunction pursuant to A.R.S. § 12-801(1) and Rule 65(h) of the Arizona Rules of Civil Procedure.
2. Under Arizona law, an appropriative water right can be acquired in three ways: (a) by beneficial use of the water prior to 1919; (b) by filing an application to appropriate with the proper state agency after 1919 and having a permit and certificate of water right granted; and (3) by complying with the applicable statutes for severing and transferring an appropriative water right from another parcel.
3. Golder did not adequately refute the assertions by Belsher and SRP that neither Golder nor his predecessors had complied with the statutory procedures required for obtaining an appropriative water right for the Golder Parcel after 1919.
4. Golder did not adequately refute the assertions by Belsher and SRP that neither Golder nor his predecessors had complied with the statutory procedures for severing and transferring an appropriative water right from another parcel to the Golder Parcel.
5. For purposes of determining the right to a provisional remedy in this Adjudication, no colorable claim has been shown to exist for an appropriative water right that was acquired for the Golder Pond or for irrigation on the Golder Parcel by beneficial use prior to 1919.

INJUNCTION

WHEREFORE, IT IS HEREBY ORDERED:

1. Golder and his successors in interest are hereby enjoined, for the duration of this Adjudication or until the parties' relative rights are litigated and decreed herein, from:

- a. blocking, diverting, or otherwise redirecting the flow of the irrigation ditch or in any other way interfering with irrigation or other water use on the Belsher Parcel;
- b. diverting any water from Greenback Creek or the irrigation ditch into the Golder Pond; and
- c. diverting any water from Greenback Creek or the irrigation ditch for irrigation or other uses on the Golder Parcel; provided however, that this Injunction does not preclude Golder or his successors in interest from using any water that overflows the irrigation ditch that delivers water to the Belsher Parcel, so long as such overflow is not caused by the actions of Golder or his successors in interest.

2. This Injunction is subject to modification and enforcement under the continuing jurisdiction of this Court.

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

4. As previously ordered, the posting of a bond in the principal sum of \$10,000.00 remains a condition to the relief granted by this order.

DATED this 1st day of December, 2008

/s/ Eddward P. Ballinger, Jr.
Eddward P. Ballinger, Jr.
JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this order is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 (Consolidated) mailing list dated July 25, 2008, Kirsten L. Copeland, Lewis and Roca, L.L.P., 40 North Central Avenue, Phoenix, Arizona 85004-4429, and to Michael L. Golder, P.O. Box 956, Tonto Basin, Arizona 85533.