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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gila River Indian Community,
a federally recognized Indian tribe,

Plaintiff,

v.

Joyce Cranford; David Schoebroek; Eva
Schoebroek; Donna Sexton; Marvin Sexton;
and Patrick Sexton,

Defendants.

COMPLAINT

The Gila River Indian Community (on behalf of itself and its Pima and Maricopa Indian members) (the “Community”) brings this Complaint against the defendants named herein to enjoin and declare unlawful the pumping of subflow of the Gila River without a Globe Equity No. 59 Decree (“Decree”) right and the irrigation of the lands identified in Exhibit A. On information and belief, these lands have been irrigated with the waters of

1 the Gila River, without any right to use such waters under the Decree, a consent decree
2 adopted by this Court on June 29, 1935 that identified and quantified all rights to use the
3 natural flow of the mainstem of the Gila River. *See* Case No. CV 31-0059-TUC-SRB.

4 **NATURE OF THE ACTION**

5 1. This action seeks to enjoin and declare unlawful the pumping of subflow of
6 the Gila River without a Decree right and the irrigation of the defendants' lands using the
7 waters of the Gila River without an appurtenant Decree right. The irrigated lands at issue
8 in this case are identified in the maps attached as Exhibit A. Each such parcel is given a
9 unique number in Exhibit A.

10 2. The Decree, adopted by this Court on June 29, 1935, quantified all rights to
11 use the natural flow of the mainstem of the Gila River.

12 3. There are no Decree rights appurtenant to the lands in Exhibit A.

13 4. Pumping subflow of the Gila River requires a Decree right.

14 5. On information and belief, the defendants (or their lessees, agents, or
15 assigns acting under their authority) are pumping waters of the Gila River without an
16 associated Decree right, from wells that are unauthorized points of diversion, and using
17 such water to irrigate the lands identified in Exhibit A.

18 6. The Community seeks an order declaring such diversions and irrigation in
19 derogation of the rights granted by the Decree, directing the Commissioner to cut off such
20 irrigation and seal the defendants' wells pumping the waters of the Gila River, and
21 requiring each of the defendants to cease and prevent such diversions and irrigation.

22 **PARTIES**

23 7. The Gila River Indian Community is a sovereign Indian nation composed
24 of members of the Pima and Maricopa Tribes, traditionally known as the Akimel
25 O'otham and Pee-Posh. It is organized and federally recognized pursuant to § 16 of the
26 Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 5123. The Community is a
27 party to the Decree.

1 20. The Decree rights polygons depicted in the Exhibit A maps are taken from
2 the Globe Equity Water Rights Database. (See Case No. CV 31-0059-TUC-SRB, Doc.
3 8090.)

4 21. The maps in Exhibit A were generated using ESRI ArcGIS software, which
5 is the same software used for the Globe Equity Water Rights Database. The background
6 photography in the maps was taken in 2016, 2017, 2018, and 2019, as noted on the maps.

7 22. The lands identified in Exhibit A have no appurtenant Decree rights.

8 23. On information and belief, the lands identified in Exhibit A have been
9 irrigated with pumped well water in one or more irrigation years from at least 2016 to
10 present.

11 24. On information and belief, the water being used to irrigate the lands
12 identified in Exhibit A consists in whole or in part of the waters of the Gila River.

13 25. On information and belief, the pumps and wells that diverted the water used
14 to irrigate the lands in Exhibit A are not authorized points of diversion for the waters of
15 the Gila River.

16 **DEFENDANT-SPECIFIC ALLEGATIONS**

17 **Joyce Cranford**

18 26. Joyce Cranford is the record owner of Parcel 3, located in Greenlee County,
19 Arizona, in Assessor Parcel Number 40021009A, as indicated by the maps in Exhibit A.

20 27. Although Parcel 3 is within the boundaries of the Franklin Irrigation
21 District, it does not receive water from the Franklin Irrigation District.

22 28. Parcel 3 lacks any appurtenant Decree rights.

23 29. Parcel 3 was irrigated during one or more irrigation years from January
24 2016 to present.

25 30. On information and belief, the irrigation referred to in paragraph 29 was
26 accomplished in whole or in part using water pumped from underground.

27 31. On information and belief, the irrigation referred to in paragraph 29 was
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1 accomplished in whole or in part using the waters of the Gila River, including subflow,
2 diverted without authorization under the Decree.

3 32. On information and belief, the irrigation of Parcel 3 referred to in paragraph
4 29 using the waters of the Gila River is in derogation of the rights of the Community (and
5 other Decree parties) to divert and use the waters of the Gila River.

6 33. On information and belief, Parcel 3 will continue to be irrigated from time
7 to time with the waters of the Gila River unless this Court issues an order preventing or
8 prohibiting such irrigation.

9 **David and Eva Schoebroek**

10 34. David and Eva Schoebroek are the record owners of Parcels 1 and 2, in
11 Assessor Parcel Number 30078001A, located in Greenlee County, Arizona, as indicated
12 by the maps in Exhibit A.

13 35. Although Parcels 1 and 2 are within the boundaries of the Franklin
14 Irrigation District, neither Parcel 1 nor Parcel 2 receives water from the Franklin
15 Irrigation District.

16 36. Parcels 1 and 2 lack any appurtenant Decree rights.

17 37. Parcel 1 was irrigated during one or more irrigation years from 2016 to
18 present.

19 38. Parcel 2 was irrigated during one or more irrigation years from 2016 to
20 present.

21 39. On information and belief, the irrigation referred to in paragraph 37 was
22 accomplished in whole or in part using water pumped from underground.

23 40. On information and belief, the irrigation referred to in paragraph 37 was
24 accomplished in whole or in part using the waters of the Gila River, including subflow,
25 diverted without authorization under the Decree.

26 41. On information and belief, the irrigation referred to in paragraph 38 was
27 accomplished in whole or in part using water pumped from underground.
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1 42. On information and belief, the irrigation referred to in paragraph 38 was
2 accomplished in whole or in part using the waters of the Gila River, including subflow,
3 diverted without authorization under the Decree.

4 43. On information and belief, the irrigation of Parcels 1 and 2 referred to in
5 paragraphs 37 and 38 using the waters of the Gila River is in derogation of the rights of
6 the Community (and other Decree parties) to divert and use the waters of the Gila River.

7 44. On information and belief, Parcels 1 and 2 will continue to be irrigated
8 from time to time with the waters of the Gila River unless this Court issues an order
9 preventing or prohibiting such irrigation.

10 **Marvin and Donna Sexton; Patrick Sexton**

11 45. Marvin and Donna Sexton are the record owners of Parcels 5, 6, 7, and 8,
12 located in Greenlee County, Arizona, in Assessor Parcel Numbers 40021006 and
13 40006004, as indicated by the maps in Exhibit A.

14 46. Patrick Sexton is the record owner of Parcel 4, located in Greenlee County,
15 Arizona, in Assessor Parcel Number 40021008, as indicated by the maps in Exhibit A.

16 47. Although Parcel 4 is within and Parcel 5 is partially within the boundaries
17 of the Franklin Irrigation District, neither Parcel 4 nor Parcel 5 receives water from the
18 Franklin Irrigation District.

19 48. Parcels 4 and 5 are irrigated together as part of a single unit using a center
20 pivot.

21 49. Parcels 4, 5, 6, 7, and 8 lack any appurtenant Decree rights.

22 50. Parcel 4 was irrigated during one or more irrigation years from 2016 to
23 present.

24 51. Parcel 5 was irrigated during one or more irrigation years from 2016 to
25 present.

26 52. Parcel 6 was irrigated during one or more irrigation years from 2016 to
27 present.
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1 53. On information and belief, Parcel 7 was irrigated during one or more
2 irrigation years from 2016 to present.

3 54. On information and belief, Parcel 8 was irrigated during one or more
4 irrigation years from 2016 to present.

5 55. On information and belief, the irrigation referred to paragraph 50 was
6 accomplished in whole or in part using water pumped from underground.

7 56. On information and belief, the irrigation referred to paragraph 50 was
8 accomplished in whole or in part using the waters of the Gila River, including subflow,
9 diverted without authorization under the Decree.

10 57. On information and belief, the irrigation referred to paragraph 51 was
11 accomplished in whole or in part using water pumped from underground.

12 58. On information and belief, the irrigation referred to paragraph 51 was
13 accomplished in whole or in part using the waters of the Gila River, including subflow,
14 diverted without authorization under the Decree.

15 59. On information and belief, the irrigation referred to paragraph 52 was
16 accomplished in whole or in part using water pumped from underground.

17 60. On information and belief, the irrigation referred to paragraph 52 was
18 accomplished in whole or in part using the waters of the Gila River, including subflow,
19 diverted without authorization under the Decree.

20 61. On information and belief, the irrigation referred to paragraph 53 was
21 accomplished in whole or in part using water pumped from underground.

22 62. On information and belief, the irrigation referred to paragraph 53 was
23 accomplished in whole or in part using the waters of the Gila River, including subflow,
24 diverted without authorization under the Decree.

25 63. On information and belief, the irrigation referred to paragraph 54 was
26 accomplished in whole or in part using water pumped from underground.

27 64. On information and belief, the irrigation referred to paragraph 54 was
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1 accomplished in whole or in part using the waters of the Gila River, including subflow,
2 diverted without authorization under the Decree.

3 65. On information and belief, the irrigation of Parcels 4, 5, 6, 7, and 8 referred
4 to in paragraphs 50, 51, 52, 53, and 54 using the waters of the Gila River is in derogation
5 of the rights of the Community (and other Decree parties) to divert and use the waters of
6 the Gila River.

7 66. On information and belief, Parcels 4, 5, 6, 7, and 8 will continue to be
8 irrigated from time to time with the waters of the Gila River unless this Court issues an
9 order preventing or prohibiting such irrigation.

10 **CLAIMS FOR RELIEF (ALL DEFENDANTS)**

11 **CLAIM ONE: DECLARATORY RELIEF**

12 67. All preceding paragraphs are incorporated here.

13 68. The Community seeks an order declaring that irrigation of the parcels in
14 Exhibit A is and has been accomplished with the waters of the Gila River without an
15 associated Decree water right, consisting of or including the subflow of the Gila River.

16 69. The Community seeks an order declaring specifically which wells used by
17 the defendants are pumping subflow of the Gila River.

18 70. Such declaratory relief will clarify and settle legal relations in issue
19 between the Community and the defendants by resolving the legal character of the water
20 contested here.

21 71. Such declaratory relief will afford relief from the uncertainty and
22 controversy faced by the parties regarding the legal character of the water used to irrigate
23 the lands in Exhibit A.

24 **CLAIM TWO: ORDER THAT GILA WATER COMMISSIONER SEAL WELLS**

25 72. All preceding paragraphs are incorporated here.

26 73. The Gila Water Commissioner is charged with assisting the Court in the
27 enforcement of the Decree and is responsible for cutting off any illegal diversions of the
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1 waters of the Gila River known to her.

2 74. The Gila Water Commissioner, as an officer of this Court, has authority to
3 cut off and seal wells known to be diverting the waters of the Gila River without a Decree
4 right.

5 75. On information and belief, the defendants' wells, including the wells being
6 used to irrigate the lands in Exhibit A, are diverting the waters of the Gila River without a
7 Decree right.

8 76. The Community seeks an order directing the Gila Water Commissioner to
9 cut off and seal the defendants' wells diverting the waters of the Gila River without a
10 Decree right, including the wells being used to irrigate the lands in Exhibit A, by
11 removing the meters from the electrical power connection to the pumps, severing the pipe
12 leading from the pump to the irrigation delivery system, and welding a metal cap onto the
13 pipe where it has been severed.

14 **CLAIM THREE: INJUNCTIVE RELIEF**

15 77. All preceding paragraphs are incorporated here.

16 78. The Community seeks an injunction requiring the defendants to cease and
17 prevent diversion, pumping, or deliveries of waters of the Gila River to lands without
18 Decree rights, including for the lands in Exhibit A.

19 79. The lands at issue here are susceptible to continued irrigation with the
20 waters of the Gila River unless this Court enjoins such violations.

21 80. The irrigation at issue here is causing irreparable harm and damages are not
22 an adequate remedy because water is a limited and often irreplaceable resource in
23 Arizona; because, on information and belief, the defendants are not capable of paying a
24 judgment in the amount of the replacement cost of the water used contrary to the Decree;
25 and because a multiplicity of suits would be required to seek compensation every year if
26 an injunction is not issued.

27 81. The equities favor an injunction because the waters of the Gila River have
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1 already been adjudicated by this Court sitting in equity by way of an equitable Decree,
 2 and because allowing the defendants and their successors to continue to profit indefinitely
 3 from disregard of the Decree would deprive the Community of the rights it received in
 4 the Decree in settlement of its claims.

5 82. The defendants will suffer no legally cognizable harm by being prohibited
 6 from using water to which they have no right, while the Community is suffering harm
 7 from the loss of water it would otherwise receive absent defendants' irrigation in
 8 violation of the Decree.

9 83. An injunction is in the public interest because it would effectuate this
 10 Court's orders and decrees, would contribute to the orderly management of the waters of
 11 the Gila River, would protect the many Decree rights holders with valid rights
 12 downstream of the defendants' lands, and would prevent the defendants and their
 13 successors from profiting at the expense of all downstream Decree rights holders entitled
 14 to the use the waters being diverted to the defendants' lands.

15 **RELIEF REQUESTED**

16 WHEREFORE, the plaintiff seeks the following relief:

- 17 1. A declaration that irrigation of the parcels in Exhibit A was and is
 18 accomplished with the waters of the Gila River without an associated
 19 Decree water right, consisting of or including the subflow of the Gila
 20 River;
- 21 2. An order declaring specifically which wells used by the defendants are
 22 pumping subflow of the Gila River;
- 23 3. An order directing the Gila Water Commissioner to cut off and seal the
 24 defendants' wells diverting the waters of the Gila River without a
 25 Decree right, including the wells being used to irrigate the lands in
 26 Exhibit A, by removing the meters from the electrical power connection
 27 to the pumps, severing the pipe leading from the pump to the irrigation
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1 delivery system, and welding a metal cap onto the pipe where it has
2 been severed;

3 4. An order requiring the defendants to cease and prevent diversion,
4 pumping, or deliveries of waters of the Gila River for irrigation of the
5 lands in Exhibit A; and

6 5. Such other and additional relief as the Court deems just and equitable.

7 DATED this 14th day of August 2019.

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