

FORMAL COMPLAINT
ORIGINAL



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2011 APR 27 12:51 PM ARIZONA 85203 APR 27 P 12:51

Injury and Wrongful Death
Litigation

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

*1992-2008

Arizona Corporation Commission
DOCKETED
APR 27 2011

ARIZONA CORPORATION COMMISSION
FORMAL COMPLAINT

W-01445A-11-0179

DOCKETED BY
nr

Jay Spear
Adv.
Arizona Water Company
Complaint#2011-94176

I am stating the claim of Jay Spear and myself, using this letter and the map attached.

It is our position that Arizona Water Company is quasi -governmental and has the same obligations and restrictions that a public utility would have, i.e.:

- 1. They are restricted from unreasonable requirements, which amount to a taking of property by reducing /destroying its value.*
- 2. They must treat similarly situated property owners equally.*

These two State and Federal constitutional protections are being violated in the position taken by Arizona water company.

Jay Spear and I own one lot each, designated as A & B on the map attached. We have homes on the lots and need water to make them usable/sellable. We contacted Arizona water Company and in February 2011, we were told that we are required to run a new 6" main from Mogollon with an estimated cost of \$22,464 to my lot, and \$10, 833 to Jay's.

The history and status of the surrounding lots and their water rights is as follows:

Lot D, adjacent to Jay on the east, was originally two lots. The acre just east of Jay was owned by Gary Spear, and south of Gary was a lot owned by James Eller. In approx. 1998, Arizona Water set 2 meters on Mogollon and allowed Gary and James to run a 2" and a 1&1/2" private line, in a single trench to service both of their lots. Thereafter lots E, F, & G, (adjacent to mine and Jay's lots on the North) were given meters by Arizona Water on Meadow Lane. Those meters are not on their property, and have private lines running through other lots, (see H, I, & J

on map) to service them. Lot E directly north and adjacent to my lot was given water by Arizona Water Company, in that configuration in 2002.

WE ARE SIMPLY ASKING FOR THE SAME ACCESS TO WATER AS THOSE AROUND US HAVE BEEN GIVEN, AS STATED ABOVE!

The unreasonableness of requiring a 6" main to our two lots, as opposed to a private line, with meters on Mogollon like the others, is that the properties east of us, who the main would arguably service, already have service. The dirt road called Shell canyon which gives access to lots A, B, D, E, F, & G is not a dedicated road way, but rather an easement by prescription across lots C, A, B & D, and dead ends at D. There is no easement for continuation of a water line past Jay's property, even if those properties did not already have water, which they do.

I met with the engineers at Arizona Water and explained these reasons why a main was not necessary, and was told, in essence: We don't know if 30-40 years from now the properties east of us will still have water, or if 30-40 years from now an easement will be available for them, so we have to pay for a main, just in case. That is not a reasonable justification for requiring us to spend tens of thousands of dollars, which is more than the value of our lots, rendering them worthless.

The equal protection violation is equally obvious. It is not fair to allow the other properties that would have shared the cost and use of a main line extension to be metered off their properties, with private line service, and make us bear the whole cost of bringing a dead end main, instead of the access from Mogollon, like that given to others.

In a conference call with Arizona Water and the Commission, the representative of Arizona Water said they made a mistake giving lots E, F, & G water without a main to their property, but that they were no longer allowing that configuration. When I explained that they cannot punish us and make us pay for their mistake, he said that he did not say it was a mistake. Instead, he stated that in 2002 Overgaard did not have internet, and they did not have access to maps to show that the water was coming through private lines from mains and meters not adjacent to the lots. I owned a business in Overgaard in 2002. There was internet and county maps were accessible. I cannot imagine that the water company would give water to those lots without drawings and applications showing the properties in relation to the meters and water source. Again, if they did, they cannot punish us and make us pay for their mistake!

In summary, we are asking for meters on Mogollon, with the right to run private water lines to our 2 lots. This is the same access granted to all the other adjacent lots. There is no justifiable reason to require an dead end main to service just our lots at a cost that would make them worthless, when the other lots which would have been serviced have already been given the access we are requesting.

Dated April 22, 2011

Ron Bailly,

attorney for Jay Spear

Navajo County

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Property Information Search

Parcel Map
206-25-065H

Show Advanced Mapping Options



COUNTRY CLUB
↑

TRAILER PARK
↘

A. RON BAILLY
PARCEL 206-25-065H

B. JAY SPEAR
PARCEL 206-25-065
(WAS F+G, NOW COMBINED
AS 206-25-065J-)

C. SPEAR PROP ON
MOGOLLON

D. JAMES ELLER
206-25-065A
COMBINED FROM 260
SERVICED IN '98 FROM
2 METERS ON MOGOLLON
WITH 1 1/2" x 2" LINES
IN SINGLE TRENCH TO
SERVE 2 HOMES.
THE SHELL CANYON
PORTION OF THE PROP
ORIGINALLY OWNED
BY GARY SPEAR WAS
FORCLOSED ON, HOME
REMOVED, & PURCHASED
BY MR ELLER, WHO
ALREADY HAD HOME
JUST SOUTH.

E, F, & G HAVE METERS
ON MEADOW LANE
WITH PRIVATE LINES
THRU EASEMENTS ON
LOTS H I & J.
LOT E DIRECTLY ACROSS
& ADJACENT TO 'A'
GOT WATER IN THIS
CONFIGURATION IN
2002.

HIGHWAY 260 HAS WATER MAIN
MOGOLLON HAS WATER MAIN
MEADOW LANE HAS WATER MAIN
~~~~~ = SHELL CANYON  
NOT A DEDICATED ROADWAY,  
JUST AN EASEMENT BY PRESCRIPTION.  
(DEAD ENDS @ D)  
TRAILER PARK HAS A WELL +  
WATER MAIN ACCESS ON 260  
GROUND EAST HAS EXISTING MAIN WATER ACCESS

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