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7 Attorney for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF GILA

10 BEAVER VALLEY IMPROVEMENT)
11 ASSOCIATION, a domestic nonprofit)
12 Corporation,)

13 Plaintiff,)

14 vs.)

15 BEAVER LAND, LLC, a domestic)
16 limited liability company; its member)
17 MICHAEL ARMSTEAD; BEAVER)
18 VALLEY WATER COMPANY, INC.,)
19 a domestic for-profit corporation; its)
20 sole director and president MICHAEL)
21 ARMSTEAD,)

22 Defendants.)
23)

NO. _____

**APPLICATION FOR
PRELIMINARY INJUNCTION**

24 COMES NOW Plaintiff, BEAVER VALLEY IMPROVEMENT
25 ASSOCIATION, by and through its attorney undersigned, pursuant to ARIZONA RULES OF
26 CIVIL PROCEDURE ("ARIZ.R.CIV.P") Rule 65 and ARIZONA REVISED STATUTES
("A.R.S.") §12-1801, *et seq.*, and applies for the issuance of a preliminary injunction
against the named Defendants, BEAVER LAND, LLC, its member MICHAEL
ARMSTEAD and BEAVER VALLEY WATER COMPANY, INC., its single director and

1 president MICHAEL ARMSTEAD, for the reasons set forth in the following
2 Memorandum of Points and Authorities, along with the verified Complaint filed
3 concurrently herewith.

4 **Memorandum of Points and Authorities**

5 **I. INTRODUCTION**

6 Pursuant to Rule 65, ARIZ.R.CIV.P, the Plaintiff requests that this Court issue a
7 Preliminary Injunction enjoining the Defendants from access and/or entry onto any and all
8 portions of Plaintiff's property, destroying, damaging, removing, fencing or otherwise
9 restricting or altering the property and the use of, to include terminating water service to
10 such property of the Plaintiff. Furthermore, the Plaintiff requests that this Court enjoin the
11 Defendants from engaging in any communication or contact with the Plaintiff, Plaintiff's
12 Board of Directors or Officers, except through its attorney, including, but not limited to:
13 verbal, telephonic (both landline or cellular), electronic or written. Additionally, Plaintiff
14 requests that this Court enjoin Defendants to immediately fix, repair, and remediate the
15 damage caused by the exploratory excavation and landside, with services obtained through
16 qualified, licensed and bonded structural engineer and contractor. Plaintiff seeks this
17 preliminary injunction pending the adjudication of the allegations set forth in the Plaintiff's
18 verified Complaint filed concurrently herewith, which seeks relief via Declaratory
19 Judgment, Permanent Injunctive and quiet tile to the property.

20
21 **II. STATEMENT OF FACTS**

22 1. Plaintiff's formation occurred on or about May 25, 1966 as a Homeowner's
23 Association for the Beaver Valley Estates, in Gila County, Arizona, by the Beaver Valley
24 Development Company. Arizona Corporation Commission Entity ID # 00690714 (herein
25 "Association").

26 2. Defendant Beaver Land, LLC formation occurred on or about August 17, 2017

1 as a domestic limited liability company, with Defendant Armstead as the sole member.
2 Arizona Corporation Commission Entity ID # L22093876 (herein "Beaver Land").

3 3. Defendant Beaver Valley Water Company, Inc. formation occurred on or about
4 May 8, 2017 as a domestic for-profit Utilities Corporation, with Defendant Armstead as the
5 sole director and president. Arizona Corporation Commission Entity ID # 21849911
6 (herein "Water Company").

7 4. Defendant Beaver Valley Water Company, Inc. is a regulated water utility,
8 Arizona Corporation Commission Utilities Division Docket No. W-03067A.

9 5. Plaintiff has enjoyed ownership, possession and/or use of the real property
10 described in the Litigation Guarantee Report attached hereto as Exhibit "A" for the period
11 in excess of fifty-one (51) years.

12 6. On or about May 26, 1966, Beaver Valley Development Company granted
13 Plaintiff "*Permament (sic) Easements and Rights-of-Way*" which was recorded upon the
14 Official Records of Gila County at Docket 191 Page 305 on June 7, 1966, for the purpose
15 of maintaining, installing, constructing, repairing, restoring, water collecting, storage and
16 distributing facilities, other utility services and railway facilities together with the right of
17 ingress and egress, more specifically described in Exhibit "B", attached hereto and
18 incorporated herein (hereafter "1966 Easements").

19 7. Additionally, Beaver Valley Development Company declared and established
20 the Conditions, Reservations and Restrictions (hereafter "CR&Rs") for Beaver Valley
21 Estates which were recorded upon the Official Records of Gila County at Docket 191 Page
22 307 on June 7, 1966, which in part required all owners to be and remain a member of the
23 Association and subject to the obligations, by-laws and rules of the Association, more
24 specifically described in Exhibit "C", attached hereto and incorporated herein.

25 8. On or about March 15, 1968, Beaver Valley Development Company, via a
26 Warranty Deed, granted Plaintiff a parcel of land bearing Gila County Assessor Parcel

1 Number (hereafter "APN") 302-17-048B which was recorded upon the Official Records of
2 Gila County at Docket 230 Page 205 on March 18, 1968, more specifically described in
3 Exhibit "D", attached hereto and incorporated herein.

4 9. On or about July 13, 1998, Plaintiff granted Beaver Valley Fire District parcel
5 APN 302-17-048B, via a Quit-Claim Deed, which was recorded upon the Official Records
6 of Gila County at Document # 1998-11202 on July 22, 1998, more specifically described
7 in Exhibit "E", attached hereto and incorporated herein.

8 10. On or about May 24, 2004, both Plaintiff and Beaver Valley Fire District
9 recorded a "Correcting Deed" which, in part, memorialized certain omissions from the
10 above reference Quit-Claim Deed, specifically to include ". . . if the [Beaver Valley Fire
11 District] ever ceases to exist or is dissolved the above-described property and the
12 improvements and fixtures on it shall revert to the ownership of the [Beaver Valley
13 Improvement Association].", which was recorded upon the Official Records of Gila County
14 at Document # 2004-008311 on May 26, 2004, more specifically described in Exhibit "F",
15 attached hereto and incorporated herein.

16 11. The parcel identified as Gila County APN 302-17-50, is located adjacent to
17 and share a boundary line on the southeast line of the above referenced parcel. The owner
18 at the above referenced time was Michael T. Davoren, a single man, doing business as
19 ("DBA") Beaver Valley Water Company ("Davoren Lot").

20 12. Based upon information and belief, in or about November 2004, Beaver Valley
21 Fire District and Michael T Davoren adjusted the Lot Line between the two parcels. This
22 adjustment was for to allow for the expansion of the Fire District Building. Gila County
23 issued the necessary building permits and approved the Certificate of Occupancy at the
24 conclusion of the construction. This adjustment caused the loss of approximately 246.96
25 square feet from the Davoren Lot.

26 13. On or about March 3, 2005, Beaver Valley Fire District caused the recording

1 of a "Record of Survey – Lot Line Adjustment" between parcel APN 302-17-048B and
2 APN 302-17-050, which was recorded upon the Official Records of Gila County at
3 Document # 2005-00376, more specifically described in Exhibit "G" attached hereto and
4 incorporated herein.

5 14. On or about July 1, 2017, Beaver Valley Fire District consolidated with
6 Whispering Pines Fire District. On this date Beaver Valley Fire District dissolved and all
7 assets, liabilities and records were transferred to the newly formed Water Wheel Fire &
8 Medical District. The resolution (Resolution #2016/2017.05) executing the consolidation
9 was recorded upon the Official Records of Gila County at Document # 2016-009698, more
10 specifically described in Exhibit "H" attached hereto and incorporated herein.

11 15. On or about December 21, 2017, Water Wheel Fire & Medical District caused
12 the survey of APN 302-17-048B, which showed the encroachment of "wire fence with
13 wood posts" adjacent to the southeast property boundary line. This survey was recorded
14 upon the Official Records of Gila County at Document # 2017-012617, more specifically
15 described in Exhibit "I" attached hereto and incorporated herein.

16 16. On or about February 16, 2018, Defendants Beaver Valley Water Company
17 and Beaver Land LLC redeemed Gila County Certificate of Purchase No. 2018-07058 for
18 APN 302-17-050 by the payment of the amount due as provided by law. More specifically
19 described in Exhibit "J", attached hereto and incorporated herein.

20 17. On or about February 27, 2018, Beaver Valley Fire District quit claimed to
21 Water Wheel Fire & Medical District, parcel APN 302-17-048B, which was recorded upon
22 the Official Records of Gila County at Document # 2018-002169 on March 2, 2018, and
23 more specifically described in Exhibit "K" attached hereto and incorporated herein.

24 18. On or about March 22, 2018, Michael T Davoren, a single man, DBA Beaver
25 Valley Water Company granted APN 302-17-50 to Defendant Beaver Land LLC, via a
26 Warranty Deed, recorded upon the Official Records of Gila County at Document # 2018-

1 003351 on March 26, 2018, more specifically described in Exhibit "L", attached hereto and
2 incorporated herein.

3 19. On or about September 13, 2018, Water Wheel Fire & Medical District quit-
4 claimed to Plaintiff, parcel APN 302-17-048B, which was recorded upon the Official
5 Records of Gila County at Document # 2018-010922, more specifically described in
6 Exhibit "M", attached hereto and incorporated herein.

7 20. Defendant Beaver Valley Water Company, Inc. claims easement and utility
8 easement upon Plaintiff's parcel.

9 21. On or about February 1, 2019, Defendants, without authorization, approval, or
10 consent of Plaintiff, entered upon Plaintiff's property, unlawfully remained, and began to
11 excavate with shovels the area adjacent to the south side of Plaintiff's structure and under
12 the building. Based upon information and belief, Defendants were looking for a water
13 main. At the conclusion of the exploration (without finding any water main), Defendants
14 left an open trench approximately 5 feet deep and extending under the foundation of the
15 structure approximately 6 feet.

16 22. Defendants recklessly defaced, tampered with, and damaged property
17 belonging to Plaintiff in such a matter as to substantially impair its function or value.
18 These actions caused a life, health and safety hazard. To date Defendants have refused or
19 ignored repeated requests to fill in the trench and repair their damage.

20 23. On or about February 8, 2019, Defendants began earth work operations of a
21 surface water located on Defendant Beaver Land property. Defendants piled the sludge
22 from the operation on the northern portion of Defendant Beaver Land property,
23 immediately adjacent to Plaintiff's property. The sludge combined with the naturally
24 occurring precipitation which caused the sludge to landslide onto Plaintiff's property.

25 24. Defendants' reckless and negligent actions are the proximate cause of damage
26 to Plaintiff's property. To date Defendants have refused or ignored repeated requests to

1 repair their damage.

2 25. Plaintiff's discovery that a northeast corner of the structure erected by Beaver
3 Valley Fire District extends into the lot set back by approximately 20.12 square feet caused
4 Plaintiff to file an application with Gila County Board of Adjustment for a variance.

5 26. On or about March 25, 2019, Plaintiff's issued an Cease and Desist / Demand
6 Letter to Defendants Water Company and Armstead, in part, demanding that Defendants
7 not enter or remaining on Plaintiff's property, cease articulating false and fraudulent
8 statements, obtain service of a certified, licensed and bonded structural engineer to develop
9 a plan of action to repair the foundation of the structure on Plaintiff property, submit the
10 plan for Plaintiff review and approval, repair the damage and fill in the trench, and remove
11 the landslide of sludge, more specifically described in Exhibit "N", attached hereto and
12 incorporated herein.

13 27. On or about April 17, 2019, after receiving no reply from Defendant Water
14 Company or Defendant Armstead, Plaintiff sent a certified letter, which was signed for on
15 April 19, 2019, pursuant to A.R.S. § 12-1103 *et seq.*, requesting Defendants sign the
16 enclosed Quit Claim Deed and a check for the amount of \$5.00, more specifically
17 described in Exhibit "O", attached hereto and incorporated herein. To date, Defendants
18 have failed to return the instrument.

19 28. On or about April 18, 2019 at the meeting of the Gila County Board of
20 Adjustment, regarding subject property, Defendant Armstead circulated a letter addressed
21 to Plaintiff's counsel which was dated April 15, 2019. In this letter, Defendant Armstead,
22 threatens, in part, "that water service to said structure will be terminate (sic) for cause
23 immediately" (page 4, ¶ 9) if the following demands were not met:

24
25 . . . to remove/tear down the 2005 addition to BVFD [Beaver
26 Valley Fire District] Fire Station, remove the propane tank and out-
building obstruction from BVWC's [Beaver Valley Water Company]

1 easement and right-of-way . . . remove the foundation from around the
2 water supply line to the main . . . turn the 2005 addition to the Fire
3 Station over to the BVWC for the construction of a new water
treatment plant for the benefit of the community. (page5, ¶ 2)

4 This letter, more specifically described in Exhibit "P", is attached hereto and incorporated
5 herein.

6 29. Based upon information and belief, Defendant Armstead also circulated a 1966
7 twenty-five (25) year Franchise document between Gila County and Beaver Valley
8 Development Company, DBA Beaver Valley Water Company, that Defendant Armstead
9 claims gave him the easements and rights-of-way in Beaver Valley Estates, more
10 specifically described in Exhibit "Q", attached hereto and incorporated herein.

11 30. Based upon information and belief, Defendants have continued to explore
12 upon Plaintiff's property without authorization or consent for water lines that may or may
13 not transverse across and under Plaintiff's property.

14 31. To date Defendants have refused to repair any damage they have done.

15
16 **III. GROUND FOR GRANTING A PRELIMINARY INJUNCTION**

17 For an applicant to be granted a preliminary injunction, it must establish "either
18 a combination of probable success on the merits and the possibility of irreparable injury, or
19 that serious questions are raised and the balance of hardships tips sharply in its favor."
20 *Justice v. National Collegiate Athletic Ass'n.*, 577 F.Supp. 356 (D.C.Ariz. 1983); *America*
21 *West Airlines, Inc. v. National Mediation Bd.*, 743 F.Supp. 693 (D.Ariz. 1990). See also,
22 *Sun Village Farms v. Bowery Savings Bank*, 735 F.Supp 945, 947 (D.Ariz. 1990), citing
23 *Hunt v. National Broadcasting Corp.*, 872 F.2d 289, 292 (9th Cir. 1989). Applying the
24 appropriate standard to the present case, it becomes clear that granting a preliminary
25 injunction is appropriate.
26

1 A. Probability of Plaintiff's Success on the Merits

2 As stated in Exhibit A (Litigation Guarantee Report) of this Application for
3 Preliminary Injunction and Verified Complaint, Plaintiff is the sole owner of the subject
4 property. Defendants have no ownership interest, easement or right-of-way rights to or
5 upon the subject property.

6 Among the allegations of the Plaintiff is that they are entitled to fee ownership
7 of the approximately 247 square feet along the southeast boundary line of the subject
8 property by virtue of adverse possession. As the verified Complaint set forth, Plaintiff and
9 its predecessors-in-interest have used this area for than ten (10) years, to include the
10 construction of an addition of to the existing fire station in 2005. The use has been actual,
11 open, continuous, hostile, and under a claim of right of ownership.

12 Therefore, it is highly likely that Plaintiff will prevail at trial on the merits.

13 B. Irreparable Injury and Balance of Hardships

14 The irreparable injuries Plaintiff will suffer should this injunction not be issued
15 are clear. The Defendant has entered and remained upon Plaintiff's property; Defendants
16 have refused or ignored Plaintiff's demand to not enter upon the property; Defendants
17 have cause excavations upon the property and failed to cover, refill, or repair those
18 excavations causing open trenches that are life, health and safety hazards; Defendants have
19 threatened Plaintiff to terminate water service to the property unless, Plaintiff terminates its
20 ownership interest in the Structure located on Plaintiff's property and transfer ownership of
21 the structure to the Defendants. If Defendants are not enjoined, the loss to the Plaintiff will
22 greatly increase, and would effectively convert the real property to Defendants. The
23 Defendants, on the other hand, will not be prevented from the use of their property has they
24 have since 2018.

25 Based upon the foregoing, the balance of hardship tips strongly in favor of the
26 Plaintiff. In addition to the irreparable loss it has already suffered, it will suffer a greater

1 irreparable loss if Defendants are allowed to enter upon Plaintiff's property un-abated
2 without enjoinder. The interests of justice and equity require that a Preliminary
3 Injunction be in force until the issues set forth in Plaintiff's verified Complaint are fully
4 adjudicated. That is clearly the action that will result in the least amount of injury to either
5 party.

6
7 **IV. BOND REQUIREMENT**

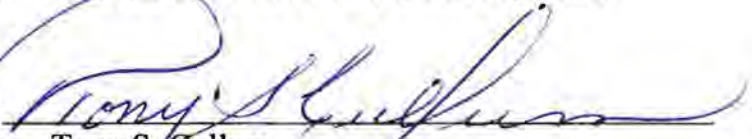
8 Pursuant to ARIZ.R.CIV.P. Rule 65(c) this Court may issue a preliminary
9 injunction only if the movant gives security in such amount as the Court considers proper
10 to pay the costs and damages sustained by any party found to have been wrongfully
11 enjoined.

12
13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that this Court grant
15 the relief requested herein. Plaintiff further requests that the Court set the bond amount
16 required.

17 DATED this 27th day of August, 2019

18 LAW OFFICE OF TONY S. CULLUM, PLLC

19
20 By 
21 Tony S. Cullum
22 14 E. Dale Avenue
23 Flagstaff, Arizona 86001
24 *Attorney for Plaintiff*

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STATE OF ARIZONA)
)ss.
County of Maricopa)

GAIL BELLINGER, upon his oath, deposes and says:

That he is the Secretary of the above named Plaintiff corporation and is duly authorized to make this verification on behalf of Plaintiff; that he has read the foregoing Application for Preliminary Injunction and knows the contents thereof; that the allegations contained therein are true of his own knowledge, except those matters stated upon information and belief and, as to such matters, he believes them to be true.

Gail Bellinger
GAIL BELLINGER

SUBSCRIBED AND SWORN to before me this 23rd day of Aug August, 2019 by GAIL BELLINGER.

Leah Wood
Notary Public

My Commission Expires:

2-14-23

