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JAN - 4 2013

MARY ELLEN DUNLAP  
CLERK OF SUPERIOR COURT  
By \_\_\_\_\_ Deputy

1 P. RANDALL BAYS, ESQ./013479  
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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 COCHISE**

10 CITY OF TOMBSTONE. )  
11 )  
12 Plaintiff, )  
13 vs. )  
14 BEATTY'S GUEST RANCH AND )  
15 ORCHARD, LLC, THOMAS BEATTY SR., )  
16 EDITH M. BEATTY, BEATTY LIVING )  
17 TRUST, )  
18 Defendants. )

CASE NO. CV201200499

**NOTICE OF APPEAL**

Assigned to the Honorable Judge:  
Ann R. Littrell, Division IV

**BAYS LAW, P.C.**  
100 S. SEVENTH STREET  
SIERRA VISTA, AZ 85635  
Tel: (520)459-2639


17 Notice is hereby given that the above named Plaintiff, CITY OF TOMBSTONE, through  
18 its attorney, P. RANDALL BAYS, appeals to the Court of Appeals of the State of Arizona from  
19 the Judgment Granting Motion to Dismiss Claims Relating to Water Rights, dated November 5,  
20 2012, and the Order, dated December 11, 2012, wherein the Plaintiff's Request for New Trial was  
21 denied. The November 5, 2012 Judgment certified that it was a final judgment as to all of the  
22 claims in this cause of action requesting adjudication or the determination of the respective water  
23 rights of these parties, and the scope and exercise of any other rights associated with the exercise  
24 of any such water rights of these parties; that there is no just reason for the delay in the entry of  
25 the judgment on these claims for relief; and this shall be a final judgment, pursuant to Rule 54(b)  
26 of the Arizona Rules of Civil Procedure, on each of these dismissed claims.

**BAYS LAW, P.C.**  
100 S. SEVENTH STREET  
SIERRA VISTA, AZ 85635  
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DATED this 4<sup>th</sup> day of January, 2013.

**BAYS LAW, P.C.**

BY:   
\_\_\_\_\_  
P. RANDALL BAYS  
Attorney for Plaintiff

A copy of the foregoing  
mailed this 4<sup>th</sup> day  
of January, 2013, to:

Mary Ellen Dunlap  
Clerk of the Superior Court  
Cochise County  
P.O. Drawer CK  
Bisbee, Arizona 85603

John A. MacKinnon, Esq.  
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Attorney for Defendants

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 4 P.O. Box 1836  
 5 Bisbee, AZ 85603  
 6 Telephone: (520) 432-5902  
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 8 Attorney for Defendants

9  
 10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
 11 **IN AND FOR THE COUNTY OF COCHISE**

12 CITY OF TOMBSTONE,  
 13  
 14 Plaintiff,  
 15  
 16 v.  
 17 BEATTY'S GUEST RANCH AND ORCHARD,  
 18 LLC, THOMAS BEATTY SR., EDITH M.  
 19 BEATTY, BEATTY LIVING TRUST,  
 20  
 21 Defendants.

No. CV201200499

ORDER GRANTING MOTION TO DISMISS CLAIMS RELATING TO WATER RIGHTS

Hon. Ann R. Littrell, Div. IV

22 The Defendants having moved to dismiss all claims raised by the Plaintiff, the City of  
 23 Tombstone, that seek any determination by this Court of the respective water rights of these  
 24 parties, and the scope and exercise of any other rights associated with the exercise of any such  
 25 water rights of these parties; and the Court finding that it lacks jurisdiction to consider and to  
 26 resolve any such alleged rights due to the pendency of the general stream adjudication now  
 27 before the Maricopa County Superior Court in the case designated as "In the General  
 28 Adjudication of All Rights to Use Water in the Gila River System and Source," W-1 through W-  
 4; and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the Defendants'  
 Motion to Dismiss Claims Relating to Water Rights is granted.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the following  
2 designated claims of the Plaintiff's Amended Complaint are hereby dismissed for the lack of  
3 jurisdiction of this Court to hear such claims:

- 4 1. The request for the declaration of rights pertaining to an alleged right-of-way, as  
5 requested in ¶ 36. A. of the Amended Complaint, to the extent that it is claimed to  
6 derive from A.R.S. § 45-152, which statute authorizes the filing of an application  
7 for a permit to appropriate water.
- 8 2. The request for the declaration of the rights of the Plaintiff to any "prior  
9 adjudication" or prior appropriation of water rights, pursuant to A.R.S. § 45-151,  
10 (which statute recognizes the right of prior appropriation of water, permitted  
11 water uses, and certain water rights on federal lands, among other matters), as  
12 requested in ¶ 36.C. of the Amended Complaint.
- 13 3. The request for the declaration and determination of "the nature, extent and  
14 relative priority of the water rights between Tombstone and the Defendants to  
15 access the McCoy Group springs and reservoir pursuant to A.R.S. §§ 45-251 et  
16 seq." (which statutes are the laws which establish the system for the general  
17 adjudication of water rights within this state), as requested in final sentence of ¶36  
18 of the Plaintiff's request for Declaratory Judgment in the Amended Complaint.
- 19 4. The request for injunctive relief regarding any access to or the use and  
20 development of any of the alleged water rights of these parties to the extent that it  
21 may be included among the claims in ¶38 of the Amended Complaint.
- 22 5. The request for "the establishment of the Plaintiff's estate" and the request that  
23 the Defendants "be barred and forever estopped from having or claiming any right  
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or title to the premises," to the extent that such "premises" includes any of the alleged water rights or the access to use or develop rights, as requested in ¶ 39 of the Amended Complaint.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT this is a final judgment as to all of the claims in this cause of action requesting the adjudication or the determination of the respective water rights of these parties, and the scope and exercise of any other rights associated with the exercise of any such water rights of these parties; that there is no just reason for the delay in the entry of the judgment on these claims for relief; and this shall be a final judgment, pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure, on each of these dismissed claims.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the Defendants are awarded their reasonable attorney's fees incurred in defending these dismissed claims, pursuant to A.R.S. § 12-348.A.1., in an amount to be determined subsequently, as authorized by Rule 54(b).

Dated this 5<sup>th</sup> day of November, 2012.

  
\_\_\_\_\_  
Judge of the Superior Court

**SUPERIOR COURT, STATE OF ARIZONA, In and for the County of Cochise**

<b>CITY OF TOMBSTONE,</b> Plaintiff,  vs.  <b>BEATTY'S GUEST RANCH, et al.,</b> Defendant.	Case No. CV201200499  <b>ORDER</b> 2012	file stamp only DEC 11 AM 10:32 ELLEN DUNLAP CLERK OF SUPERIOR COURT BY _____ DEPUTY
<b>HONORABLE ANN R. LITTRELL DIVISION FOUR</b> By: Jacqueline Parks, (12/10/12) <b>Judicial Administrative Assistant</b>		

The Court having reviewed the Motion for Clarification and Response thereto, and finding that good cause exists to clarify its order with respect to attorney's fees,

**IT IS ORDERED** AMENDING the Order Granting Motion to Dismiss Claims Relating to Water Rights to provide that no attorney's fees were being awarded at that time. The remainder of the Order is confirmed. Plaintiff's Request for New Trial is DENIED.

mailed/distributed: (date)(initials) | 12/11/2012 ✓  
xc: P. Randall Bays, Esq., 100 S. 7<sup>th</sup> Street, Sierra Vista, AZ 85635  
John A. Mackinnon, Esq., P.O. Box 1836, Bisbee, AZ 85603