

Case Study

Water Settlement

Scythe & Spade utilizes its ability to work as a team, pulling expertise and resources from across State lines to address complex water right filings to preserve irrigation rights on some 2000 Gila Valley acres.

- **Background Issues:** When some of the earliest pioneers began moving across the south central Arizona valleys they found the Gila Pima Indians farming a long staple strain of cotton and squash under a flood irrigation system that had been developed over thousands of years.

Recognizing the valley for the temperate controlled (albeit hot) environment that it was, the pioneers quickly began damming off rivers and water sources, pouring concrete in many of the same canal systems developed by the Pima and Hohokam Indians, and expanding the acreages under cultivation.

Farmers in the early 1910's completed the process of utilizing all available surface water once maximum irrigable acreage was achieved – and in essence, shut off water formerly used by the Indian community. As can be imagined, the Native American community took legal action, and for some eighty or ninety years, the issue has been in the courts, with farmers, living and deceased all along the Gila River being named in the suit. Not until the recent settlement which includes water provided by the Central Arizona Project (or CAP), has there been any substantive progress in the settlement.

The settlement called for farmers who draw water from the Gila River to designate and prioritize those acres to be protected with water rights based upon announced criteria. Farmers, or more specifically, landowners, were given a very short deadline within which to work with an incomplete set of instructions, and with virtually no verbal instructions or standards to follow.

The Gila Valley Irrigation District and the canal companies were given a short deadline within which to transfer water within the districts without opposition, so long as applications, charts, maps, and legal descriptions were filed by June 14, 2008, according to the general terms outlined by the Gila Water Commissioner, per the United States District Court (Case No. CV31-59-TUC-SRB)



SCYTHE & SPADE CO.
www.ag-management.com
866.676.3276

Of specific concern was that “undecreed” farm lands were being irrigated illegally. Lands which had been irrigated for almost a hundred years, but on which water rights had never been established were to be cut off – and the corresponding water being used to irrigate such land was to be returned to the river, to flow downstream to the Gila River Indian Community.

Such “hot” (land that was being farmed with out water rights) lands would be given a one time chance to be protected if field boundary changes, roadways or farmyards had been installed on other “eligible” acres – which in essence freed up a few acres here and there which might be available for transfer to cover these hot acres. All extra water supplies being used on ineligible lands could also be utilized and transferred to any of these “hot” lands. All of the decree information is based on the 1935 decrees (a.k.a. Glove Equity No. 59).

- **Client Concerns:** Our Client has the expertise with in their in-house legal counsel to deal with the situation, but in consultation where our client and the Scythe and Spade team met to confer, it was determined that the experienced Scythe & Spade team would be in a better position to pull resources, talent, knowledge and GIS mapping systems to more quickly respond to the pressing deadline.
- **The Scythe & Spade Approach:** After studying the issues, the concerns, and the problems associated with a dynamic process that was evolving and changing even as we were attempting to identify the best manner in which to present the information, Nicole Kendall was able to determine where Scythe & Spade expertise and resources could potentially clean up and clear up the application process to enable the water districts to more clearly understand the proposals being made on the Clients behalf. For example, one of the concerns dealt with lack of instructions on how to present a legal description on a form, complicated by the fact that the area had never had surveys done from which to draw on.

Scythe & Spade expertise at Nicole’s fingertips included the mapping and GIS skills of David Dodds, the local knowledge of the farms and districts of field representative and farm manager, Patina Thompson, the clerical support of the flexible intern, Ty Winterton, as well as her own knowledge base, organizational, and communication skills which proved to be the driving force that moved the project forward.

Nicole quickly began to sense how to break work out into the following sequential steps:

- **Identified Decreed Acres.** After studying the problems and issues associated with the overall project we determined that the simple starting point was to utilize our tenants To Be Irrigated (TBI) forms to indicate the decreed acres per farm. This established the baseline of which acres were legal to be irrigated.



- *Mapping.* Dave Dodds created maps of all farms, complete with grid lines, breaking farms down to the 10 acre block, for ease of determining legal's.
- *Comparison of TBI to Actual Farmable Acres.* On a farm by farm and field by field basis, Nicole analyzed the TBI decree information and compared it to the actual farmable acres.
- *Identification of "Non TBI" acres.* Nicole found properties that did not show any TBI and double checked her work by contacting the corresponding irrigation district office for confirmation. This verification proved to be a valuable step in that district feedback confirmed her initial analysis in some cases. In other cases it revealed presence of additional TBI forms or information that was not given the first time.
- *Preliminary workup on Transfers.* With the double check complete, Nicole analyzed the decreed acreage to the farmable acres and identified and marked those acres needing transfers.
- *Communication with Commissioner / Water Authority.* Nicole contacted the Commissioner's office routinely for up to date information regarding the upcoming dead lines and processes. Consistent communication was needed in order to "pin down" the Commissioner's office in terms of the application, format, maps, etc.
- *Evolving Playing Field.* Again, the dynamics were changing daily in that no forms had ever been submitted. Staff in the district and Commissioner's offices could not advise as to how to present information. Apologetically, they indicated that it was like walking into a dark room with no option of light. They proved to be unable to provide much information. For instance, they did not know whether or not you needed an expensive legal survey – or whether a written legal attached to a map would suffice (the survey would have been out of the question, due to cost, time, and accessibility). Additionally, because of liability concerns, they could or would only give minimal information, so as not to be accountable for any negative results.
- *Fine Tuning of Efforts.* In seeking to understand and in responding to Client desires, we did a slight course correction to provide assurances of accuracy of our work, as outlined:
 - » *Communication with Client.* The Scythe & Spade team, under Nicole's direction and insistence, first met with the partners at the client's office to provide an up to date accounting of where the process stood, to show progress, and to ask for feedback regarding alignment of Client desires and our efforts.
 - » *Feedback Summary.* The Client had concerns regarding thoroughness – making it clear that we needed to double check all areas on the respective property parcels compared against the original decree to ensure that the districts were correct in the information we had obtained and were working off of.
 - » *Follow-up Steps.* We then obtained a copy of the original 1935 decree in a photo copy form. Initial efforts to subcontract the task of conversion of data out of that report into a readable and usable excel spreadsheet format failed as the contracted company was unable to perform in providing us with useable information that could be manipulated and utilized.



- » *Re-Direct.* So after what was to have been a two-day time frame ended up being a week delay only to have the information turn up unusable, Nicole and the Idaho office stepped up and manually input hundreds of pages of information into excel spreadsheet form.
- *Development of a Proposed or Tentative Transfer.* Nicole then performed a review of decreed acres to determine excess water right – with which she then determined which hot or uncovered acres could be targeted with excess water rights.
- *Prioritization of Farmland.* At the same time, Patina met with all property lessees and went over the status of their farmable acres to perform a comprehensive evaluation of priority. The motivating factor in performing this analysis was to determine whether one parcel might be considered more valuable and be in greater need of a water right than another.
- *Prioritization Factors.* Factors taken into consideration included:
 - » Soil quality of the hot acres needing coverage / transfer.
 - » Yield capability of the field.
 - » Quality of the irrigation distribution system.
 - » Frequency and severity of flood susceptibility and damage history.
- *Indirect Benefit.* What is being left unsaid here is that by default, we were determining which fields would be uncovered at the end of the day, which would receive no water rights – and which would be abandoned or retired from agricultural production. This decision was based not on a parcel or farm by farm basis, but rather across the board of all lands owned by Client.
- *Final Recommendation of Transfer.* With a knowledge of the excess water rights and an understanding of the highest quality land needing coverage, Nicole flew from Idaho to Tucson where she spent several days and nights working with Patina going through the painstaking process of identifying which water right was “giving up” a few acres – where the rights were being directed to, roughing in a map identifying both, and assigning a transfer number.
- *Organizational Tool.* Patina and Nicole also left a paper trail, utilizing a spreadsheet to indicate the final decisions of the actual transfers (bringing water from one 1/4 1/4 to another 1/4 1/4 within the property or to another).
- *Mapping & Use of GIS.* Copies of these transfers were sent to Dave for mapping. The mapping process played out as follows:
 - » Dave sought feedback from the Client’s legal representation regarding disclaimers, and creation of legal descriptions without the aid of a formal survey, liability, etc.
 - » Our Client’s attorney proposed a script that would cover us from being looked at in a non-survey way, but with credible standing. This was a time consuming process, deciding upon the needed wording which would document that the legal descriptions were estimates.
 - » The job of map creation involved preparing 105 different maps, fine tune, and print, with an average of 15 minutes per map for creation and a few minutes for printing of each map.
 - » With deadlines looming within days, David Dodds responded in a remarkable superhuman effort putting in 36 hours straight, working right through the weekend.



- *Spot Checks & Review of Work.* Patina and Nicole served as quality control and discovered periodic errors needing correction to ensure a quality final product.
- *Application Creation.* Patina and Nicole worked around the clock to ensure that applications were filled out and that they matched the associated maps.
- Intern, Ty Winterton was made available to assist Nicole, and he was put to work locating the areas in the original decree and annotating the pages from which they came, making it easier for Patina and Nicole to assemble the forms and to transfer information onto the applications. If not addressed in the decree, he checked the spreadsheet of transfers and indicated where this water was historically transferred from.
- *Feedback from Water Commissioner.* Nicole contacted the Water Commissioner regularly for up to date information regarding the deadline and asking for a list of things that would be needed when the application was turned in.
- *Contact Resource Help.* Nicole also communicated with other contacts in that area for information on parts of the application. They provided information and insight regarding locations of all the points of diversions and helped out with any questions.
- *Time Frame.* Nicole and Patina spent two and a half days filling out applications and double checking the work. The second party system utilized between Nicole, Patina, Ty, and Dave allowed for minor corrections to be made as the process moved forward.
- *Final Client Approval on Work.* The team consisting of Nicole, Patina, Ty, Dave, Kyle, and Monte met with the Clients to present the final recommendation for submission, as follows:
 - » We reviewed the Clients priorities to ensure that we were in philosophical alignment with the recommendations being made and as presented.
 - » We confirmed to the Clients that we had based all proposed transfers upon the information contained in the original decree.
 - » We confirmed that all recommendations were outlined on the completed applications.
 - » We confirmed that we had utilized all “spillover” water rights in the best manner possible by proposing a transfer to the best quality “hot” lands available.
 - » We reassured them of the need to transfer and cover every acre possible, given the fact that lands may remain in agriculture production for another fifty years.
 - » With these reassurances, the Client was willing to follow the Scythe & Spade recommendations.
 - » Directions were given to finalize applications and to prepare them for signature on Friday, May 30, 2008.
 - » The plan was to obtain signatures so that the Client could forward the applications to the attorney for the water districts by Monday, June 2nd.
- *All Nighter.* With the final aspects of the plan in place, Nicole and Patina again worked through the night finalizing applications and ensuring that all information was correct.



- *Signature Process.* The Clients came to the Scythe & Spade office to sign and notarize all 105 applications.
 - *Project Completion & Submission.* In meeting the deadline the following flurry of activity took place during the last hours before deadline:
 - » Printing Process. The actual print process of the applications with the needed copies for designating parties, took a full day.
 - » Last minute changes, corrections, or improvement of the appearance of the application on paper were performed up until the very last minute, with Ty taking a lead in some of the final assembling of maps and applications.
 - » The Packet of applications and signatures were submitted to the local irrigation districts by 10:30 am on the day of the deadline.
 - *Follow-up.* Patina followed up making sure all applications made it from the water district office to the Water Commissioner's office. Shortly thereafter she verified that the packet were all in order to there satisfaction. A couple of changes were needed, but Patina handled it will confidence and ease. Patina was in contact with the Water Commissioner until final approvals are made.
-
- **Project Summary:** Overall, the project was handled cleanly and professionally even in the midst of evolving rules and in the absence of clear direction. The Scythe & Spade experience in doing water consulting, in mapping, and in negotiating through bureaucracies helped us to anticipate what would be needed, how to present that information in a clean manner, and how to improve the odds that the information would be well received in a positive manner proved to be invaluable. Nicole's organizational abilities and drive were further instrumental in meeting a deadline and in securing a positive result for the client.

