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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF APACHE
8

9 IN RE THE GENERAL
10 ADJUDICATION OF ALL RIGHTS
11 TO USE WATER IN THE LITTLE
12 COLORADO RIVER SYSTEM AND
13 SOURCE

CV6417

Case: CV6417-33-5704

14 **ORDER TO EXPRESS INTEREST AND**
15 **UPDATE COURT-APPROVED**
16 **MAILING LIST**

17 CONTESTED CASE NAMES: *In re First American Title Insurance Co. of Arizona*

18 HSR INVOLVED: Silver Creek Hydrographic Survey.

19 DESCRIPTIVE SUMMARY: This order directs landowner Timothy Jefferies to notify the
20 Court by **Friday, January 31, 2025**, if he is interested in pursuing any potential water rights on
21 his property and removing all other landowners who are not parties to this contested case from
22 the court-approved mailing list.

23 NUMBER OF PAGES: 5

24 **EXPRESSION OF INTEREST**

25 This case was initiated July 19, 2024, and the initial conference held September
26 19, 2024. At that conference, SRP claimed the only use identified in the watershed file
27 report ("WFR") was a single stockpond in Lot 55 (Navajo County Parcel #404-95-
28 055), however, the case initiation order included any potential claims appurtenant to
the land investigated in WFR 33-51-023. In the September 24, 2024, minute entry for
the initial conference, the Court ordered the Arizona Department of Water Resources

1 (“ADWR”) file a map indicating the extent of the land investigated in WFR No. 33-51-
2 023 by November 1, 2024. A review of the map confirms SRP’s assertion that this
3 contested case involves only a single parcel reported by the Navajo County Assessor’s
4 Office as being owned by Timothy R. Jeffries. Mr. Jeffries did not attend the July 19,
5 2024, initial status conference for this contested case.

6 **THEREFORE, IT IS ORDERED** that Timothy R. Jeffries must notify this
7 Court in writing by **Friday, January 31, 2025**, if he is interests in pursuing any potential
8 water rights on his property. Failure to provide the documentation as ordered by the
9 Court shall result in the dismissal of any potential claims Mr. Jeffries may have in this
10 contested case.

11
12 The remaining parties who were notified of this contested case do not appear to
13 be diverting water from the stockpond on parcel #404-95-055 and therefore no longer
14 need to be involved in this contested case.

15 **THEREFORE, IT IS FURTHER ORDERED** the following parties will be
16 removed from the Court-approved mailing list. All parties will receive a courtesy copy
17 of this order. Any party who would like to remain abreast of this case my access
18 documents on the General Stream Adjudication website at
19 www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp

20 Millette Herbert

David Willett

21 Joshua R Bunch

Michael Willett

22 James A Chartier

Michael & Kelly Nail

23 William & Lynette Mattingly

Martin L Clark

24 Eliodoro Montes
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26 **WELL INSTALLATION GENERAL INFORMATION**

27 A number of the property owners notified of this case indicated they would like
28

1 to install groundwater wells on their property sometime in the future. The following
2 information is provided as a courtesy only. Property owners are encouraged to seek
3 their own legal or technical advice if they have further questions or concerns.

4 Arizona regulates surface water and groundwater differently. Surface water is
5 governed by the doctrine of “prior appropriation”, which means that the first person to
6 divert the water and put it to beneficial use has the senior right to that water. All
7 subsequent water users have a junior right to the water and can only use the water as
8 long as there is enough to fulfill all the senior rights first. Groundwater is governed by
9 the doctrine of “reasonable use.” A property owner may extract as much groundwater
10 as can be reasonably used for a beneficial use.

11 However, case law as a result of the General Stream Adjudication has blurred
12 the distinction between ground and surface water, resulting in the legal concept of
13 “subflow.” Subflow is water that flows underground, but exists so close to, or reacts
14 so directly with, a surface stream that the water is actually a part of that surface stream
15 and not a separately distinguishable groundwater source. In 1993, the Arizona Supreme
16 Court agreed that subflow can be regulated as surface water. A such, **wells located**
17 **within the subflow zone are presumed to be pumping surface water.** Development
18 of the subflow zone for any particular Arizona river system is a multiple year endeavor
19 completed by the Arizona Department of Water Resources with cooperation from the
20 Arizona Geological Survey. **At this time, the Silver Creek subflow delineation**
21 **report is due for completion in late September 2026.**


22 Without the technical report delineating the subflow zone for Silver Creek and
23 the associated tributaries, it is impossible to determine which properties will be
24 impacted by the delineation. At a minimum, however, when drilling a well near a body
25 of surface water, well owners should file a statement of claimant in the event they may
26 be pumping appropriable subflow. A basis of right can be costly and time intensive,
27 therefore landowners may want to wait until the subflow delineation report is
28 completed and there is more certainty regarding the locations of their wells. However,

1 such a basis of right will be required for a final adjudication of a water right in the
2 event their well is drawing appropriable water

3 Locating a well further away from a surface water source is not necessarily a
4 guarantee of staying outside of this Court's jurisdiction if the well's cone of depression
5 would intersect with subflow zone. Wells outside of the delineated subflow zone will
6 be subject to a cone of depression analysis to determine if they are impacting the
7 surface water and thus still within the jurisdiction of the General Stream Adjudication
8 Court.

9 This information is by no means a suggestion not to drill a well. It is rather a
10 notice to landowners contemplating a well that they may be subject to certain
11 appropriable water requirements and should be prepared for the additional time and
12 expense of such regulations.

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14 Signed this 20th day of November 2024

15
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17 
18 Sherri L. Zendri
Special Water Master

19
20
21
22 On November 20, 2024, the original of the
23 foregoing was delivered to the Clerk of the Apache County
24 Superior Court for filing and distributing a copy to all
25 persons listed on the Court-approved mailing list for this
26 contested case, a copy of which is attached hereto as
27 Attachment A.

28

Emily Natale

ATTACHMENT A

Initial Court-Approved Mailing List

Arizona Department of Water Resources
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Courtesy Copy only:

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Special Master Sherri Zendri
Superior Court of Arizona
201 W. Jefferson Street
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Phoenix, AZ 85003

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Salt River Project
J.B. Weldon, M.A. McGinnis, M.K. Foy
Salmon, Lewis, and Weldon
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Phoenix, AZ 85016.

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Cave Creek AZ 85327

Timothy R Jeffries
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White Mountain Lake, AZ 85912

Eliodoro Montes
9308 W Elwood St
Tolleson AZ 85353

U.S. Bureau of Land Management
Phoenix Field Office
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Phoenix, AZ 85022

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Josh Edelstein Phoenix Field Solicitor
Office of the Solicitor
U.S. Department of the Interior
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