

**SUPREME COURT OF ARIZONA**

IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS  
TO USE WATER IN THE GILA  
RIVER SYSTEM AND SOURCE

Supreme Court Nos.  
WC-79-0001  
WC-79-006  
WC-22-0001-IR

IN RE THE GENERAL  
ADJUDICATION OF ALL RIGHTS  
TO USE WATER IN THE LITTLE  
COLORADO RIVER SYSTEM AND  
SOURCE

Maricopa County Superior Court No.  
W1-00-001234

Apache County Superior Court No.  
CV 6417

**CERTIFICATION**

In accordance with the Special Procedural Orders Providing for Interlocutory Appeals and Certifications issued by the Supreme Court on September 26, 1989, and June 1, 1994, this Court hereby certifies to the Supreme Court two rulings of the Adjudication Court entered in the Gila River General Stream Adjudication.<sup>1</sup> Copies of the rulings are attached to this certification.

The Adjudication Court certifies the following questions to the Supreme Court:

1. Whether appropriative rights to water initiated before June 12, 1919, are subject to statutory forfeiture.
2. Whether the administrative process set out in Arizona's surface water code is the sole method for a private well-owner to obtain an

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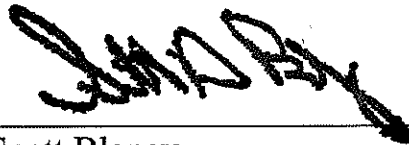
<sup>1</sup> Amended Order Adopting Final Report as Modified, *In re St. David Irrigation District*, W1-11-1675 (May 5, 2026) - attached as Exhibit 1; Order to Adopt Final Report with Clarifications, *In re Town of Huachuca City*, W1-11-000245 (Mar. 26, 2026) – attached as Exhibit 2.

appropriative right after 1919.

3. Whether the Adjudication Court has equitable authority to decree an appropriative right in the absence of compliance with the surface water code.

The Adjudication Court believes that these issues are substantial and properly the subject of the Supreme Court's review under the Special Procedural Orders. The rulings present important issues of first impression that affect both the general adjudication of the Gila River System and the Little Colorado River System. Early appellate review by the Supreme Court at this juncture in the adjudications will result in substantial savings of time, expense, and resources.

Signed this 6th day of May 2026



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Hon. Scott Blaney  
Judge of the Superior Court

This certification was delivered to the Clerk of the Maricopa County Superior Court, the Clerk of the Apache County Superior Court, and the Clerk of the Arizona Supreme Court for filing. The notice was distributed to all persons listed on the Court approved mailing lists for cases CV 6417, W1-00-001234, W1-11-1675, W1-11-002093, W1-11-000245, W1-11-003359, and W1-11-003397.

# **EXHIBIT 1**

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G. Bernal De Villa, Deputy

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION  
OF ALL RIGHTS TO USE WATER IN THE  
GILA RIVER SYSTEM AND SOURCE

W1-00-001234 (Consolidated) ;  
Contested Case No. W1-11-001675

(contested case W1-11-002093 consolidated  
with W1-11-001675)

**AMENDED ORDER ADOPTING FINAL  
REPORT AS MODIFIED<sup>1</sup>**

CASE NAME: *In re St. David Irrigation District*  
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report  
DESCRIPTIVE SUMMARY: Special Water Master Harris's final report dated November 18,  
2021, and issued under Ariz. R. Civ. P 53 is adopted as modified herein. Specifically, the Court  
replaces the Special Water Master's legal conclusions with the ruling below.  
NUMBER OF PAGES: 13  
DATE OF FILING: May 5, 2026

The issue before the Court is whether a limited class of potential appropriative rights to  
water initiated before June 12, 1919 ("pre-1919 rights") are subject to statutory forfeiture due to  
non-use for five successive years as mandated under Arizona law beginning June 12, 1919.

Based upon the analysis below, the answer is "no."

<sup>1</sup> The Court issues this "Amended" Order to replace the original March 3, 2026 *Order Adopting Final Report As Modified*. This Amended Order incorporates two edits made on page 12 of the original Order in response to the parties' motions for reconsideration. See April 10, 2026 *Order on Motion for Reconsideration* at pp. 1-2. This Amended Order is the final order for purposes of certification to the Arizona Supreme Court.

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**FACTUAL AND PROCEDURAL BACKGROUND**

A detailed explanation of the factual and procedural background to this action can be found in the Special Master’s November 18, 2023, Report. The following is merely a summary.

- 1) On January 23, 1995, Special Master Thorson initiated contested case no. W1-11-1675 to adjudicate objections and claims for water rights filed by the St. David Irrigation District (“SDID”) on behalf of its shareholders.<sup>2</sup>
- 2) The SDID filed Statement of Claimant 39-06593 claiming 5,500 acre-feet of water for irrigation use with a claimed date of initiation of July 1881 and a date of first use for beneficial purposes of July 1883. It also filed Statement of Claimant 39-06594 for 8,550 acre-feet of water for irrigation use with an 1881 date of initiation of right and date of first beneficial use.
- 3) The Arizona Department of Water Resources (“ADWR”) investigated SDID’s claims and provided an extended narrative about the SDID in Vol. 1 *Hydrographic Survey Report for the San Pedro Watershed*, 333-351 (filed Nov. 20, 1991) (“San Pedro HSR”).
- 4) Among the consolidated cases are a group of cases that include potential water rights for irrigation use that ADWR investigated and “determined that no irrigation has taken place on this property (or parcel) in the last five years.”<sup>3</sup> Vol. 4 San Pedro HSR at 36.
- 5) Multiple parties objected to any potential water rights where ADWR had determined that the water use had been idle for more than five years (the “Forfeiture Objection”).
- 6) On January 31, 2020, the Salt River Project, joined by the SDID and others, filed a motion for partial summary judgment challenging the Forfeiture Objection (“2020

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<sup>2</sup> A Statement of Claimant may be filed by any public or private legal entity on behalf of its members or users. A.R.S. §§ 45-251(1), 45-254(A).

<sup>3</sup> The five-year time period has legal significance under Arizona law because under current Arizona law, “when the owner of a right to the use of water ceases or fails to use the water appropriated for five successive years, the right to the use shall cease, and the water shall revert to the public and shall again be subject to appropriation.” A.R.S. 45-141(C).

- 1 Motion") for potential water rights claiming a priority date prior to June 12, 1919.
- 2 7) Based on the Arizona Supreme Court's decision in *San Carlos Apache Tribe v. Superior*  
3 *Court*, 193 Ariz. 195, 972 P.2d 179 (1999) ("*San Carlos*"), the 2020 Motion was denied  
4 by the Special Master and a decision entered that pre-1919 water rights are subject to  
5 statutory forfeiture. Minute Entry filed September 10, 2020.
- 6 8) On August 16, 2021, St. David Irrigation District, joined by ASARCO LLC and  
7 Freeport Minerals Corporation, filed a motion for partial summary judgment ("2021  
8 Motion") focused on a single contested case, W1-11-2093. This case was also included  
9 in the 2020 Motion, but the question presented by the 2021 Motion is specific to the  
10 facts of W1-11-2093 to "facilitate review of appeal," of the Special Master's September  
11 10, 2020, decision. 2021 Motion at 2.
- 12 9) The 2021 Motion requested the Special Master submit a Rule 53 Report to the General  
13 Stream Adjudication Judge with a 30-day objection period. 2021 Motion at 4.
- 14 10) On November 18, 2021, the Special Master filed her report.
- 15 11) All objections to the Report were timely received.

16

17 **CERTIFICATION**

18 The filings in this matter predate the undersigned Judge's tenure on this case, although the  
19 undersigned Judge ultimately presided over the oral argument. The undersigned Judge has  
20 reviewed the record in this case and has familiarized himself with the facts, issues, and  
21 evidence contained therein.

22

23 **LEGAL ISSUES**

24 The question of law presented by the 2020 Motion and the 2021 Motion is whether a  
25 water right with an asserted priority date prior to June 12, 1919, is subject to statutory forfeiture  
26 when the owner of the right to use water ceases or fails to use the water for a five-year period  
27

1 beginning after June 12, 1919.<sup>4</sup> The 2020 Motion sought to resolve that pure issue of law. The  
2 2021 Motion sought to resolve a specific claim to irrigate 17.5 acres of land where the  
3 landowner claims a pre-1919 water right and does not dispute that the 17.5 acres of her land  
4 were not irrigated for a period of at least five years beginning after 1919. Report at 5.

5 Specifically, the 2020 and 2021 Motions presented the following issues to the Special  
6 Master:

- 7 1. Did the Supreme Court of Arizona in *San Carlos* hold that statutory forfeiture,  
8 embodied in A.R.S. § 45-141(C), applies to water rights that were initiated prior to  
9 June 12, 1919?
- 10 2. If the Supreme Court of Arizona did not so hold, do either Article XVII of the  
11 Arizona Constitution or the savings clauses in the Arizona Water Code prohibit  
12 application of statutory forfeiture to pre-1919 water rights?
- 13 3. Have rights to use water on the 17.5 acres of land owned by Terisha Driggs, to the  
14 extent that they historically existed, been forfeited under section 45-141(C)?

15 The Court has, in its discretion, slightly modified these issues in the analysis below to  
16 fit the realities of the case.

#### 17 18 STANDARD OF REVIEW

19 Where there is a dispute regarding the Special Master's conclusion of law, the trial  
20 judge must review them *de novo*. Ariz. R. Civ. Pro. 53(f)(4). The court must decide all  
21 objections to findings of fact made or recommended by a master under the clearly erroneous  
22 standard. Ariz. R. Civ. Pro. 53(f)(3).

#### 23 24 FINDINGS OF FACT

25 The Special Master's denial of the 2020 Motion rejected a defense to the Forfeiture  
26

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27 <sup>4</sup> No party argues that the owner of water right with a pre-June 12, 1919, priority date forfeited  
28 that right if the landowner failed to use the water for a five-year period ending before June 12,  
1919. Report at 9.

1 Objection as a matter of law and did not require a factual determination that any particular  
2 claimant had forfeited a water right and it did not deny water rights to any claimant or  
3 landowner. No pertinent findings of fact were made explicitly or implicitly regarding any of  
4 the contested cases in the 2020 Order.

5 As noted in the Special Master's Report, and in all associated filings for the 2021  
6 Motion, the 2021 Motion did not present any dispute of material fact regarding the historical  
7 absence of irrigation on the relevant 17.5-acre pasture. All parties agreed that:

- 8 1) Terisha Driggs purchased the Property in January 2016 and is the successor-in-interest  
9 to George Whitehead et al., as to the rights claimed under the WFR.
- 10 2) Since January 2016, Ms. Driggs has irrigated an orchard of approximately 2.5 acres on  
11 the east side of the Property and a field of approximately 17.5 acres on the west side of  
12 the Property.
- 13 3) No evidence exists in the record that the 17.5-acre field on the west side of the Property  
14 was irrigated for the 30 years from 1986 to the beginning of 2016.

15 **THE COURT THEREFORE FINDS** that no irrigation occurred on the relevant 17.5-  
16 acre field between 1986 and early 2016.

#### 17 18 CONCLUSIONS OF LAW

19 The operative portion of the 1919 Arizona Water Code, Chapter 164, Section 1,  
20 declares:

21 The water of all sources of supply, flowing in natural streams, canyons, ravines  
22 or other natural channels, or in definite underground channels, whether  
23 perennial, intermittent or flood waters, waste or surplus water, and of lakes,  
24 ponds and springs, on the surface, belongs to the public and is subject to  
25 beneficial use as herein provided. Beneficial use shall be the basis and the  
26 measure and the limit to the use of water in the State, *and whenever hereafter  
27 the owner of a perfected and developed right shall cease or fail to use the  
28 water appropriated for a period of five (5) successive years the right to use  
shall thereupon cease and revert to the public and become again subject to  
appropriation in the manner herein provided.* But nothing herein contained  
shall be so construed as to take away or impair the vested rights which any  
person, firm, corporation or association may have to any water at the time of  
passage of this act.

(Emphasis added).

1 As stated above, the Court must determine whether this forfeiture provision from the  
2 1919 law – statutory forfeiture of water rights after five years of non-use – applies to water  
3 rights that had been acquired prior to the law’s enactment. The Court’s analysis requires three  
4 specific inquires:

- 5  
6 1. Whether the Arizona Supreme Court in *San Carlos Apache Tribe v. Superior Court*,  
7 193 Ariz. 195 (1999) has already resolved this issue. If the answer is “yes,” the Court  
8 need look no further. If the answer is “no,” then,
- 9 2. Whether the forfeiture provision of the 1919 Water Code, by its terms, applied to  
10 preexisting water rights. If the answer is “yes,” that determination ends the analysis. If  
11 the answer is “no,” then,
- 12 3. Whether common law prior to the enactment of the 1919 Water Code required  
13 forfeiture based solely upon non-use.

14 If the answer to all three questions is “no,” then water rights acquired prior to enactment  
15 of the 1919 Water Code are not subject to statutory forfeiture based upon five years of non-use,  
16 regardless of whether that non-use occurred after the enactment of the 1919 Water Code.

17 **I. Application of *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195 (1999)**

18 The Arizona Supreme Court issued the *San Carlos* ruling in 1999, which affirmed in  
19 part the rulings of a previous General Stream Adjudication Judge: the Honorable Susan R.  
20 Bolton. The case arose from the Legislature’s attempt to enact certain statutes that the  
21 Legislature intended to have retroactive effect on water rights in the state. Specifically, in 1995  
22 the Legislature amended the water statutes and added, *inter alia*, a provision stating that  
23 statutory forfeiture by non-use shall not apply to a water right initiated before June 12, 1919.  
24 The Legislature also added additional language that made “abandonment” (as opposed to  
25 forfeiture) the sole basis for relinquishment of a water right initiated before June 12, 1919.

26 Our Supreme Court struck down these sections, among others, as unconstitutional. The  
27 court reasoned that the amendments improperly applied retroactively to actions taken prior to  
28 the 1995 amendments. The Court further reasoned that the amendments were impermissibly

1 intended to alter existing water rights retroactively, because other junior appropriators may  
2 have already moved up in priority due to the forfeiture of water rights by more senior  
3 appropriators. Those already forfeited, more senior rights could not be revived by subsequent  
4 legislation to the detriment of the junior appropriators who had moved up in priority. Such  
5 action would be a violation of due process under the Arizona Constitution. Specifically, the  
6 court stated in relevant part:

7 The consequences of failure to make use of appropriated water on all of the  
8 appropriator's land **must be determined on the basis of the law existing at the**  
9 **time of the event, not on the basis of subsequently enacted legislation that**  
10 **may change the order of priority.** \*\*\* Section 45-141(C) eliminates any  
11 possibility of forfeiture for rights initiated before June 12, 1919. If applied  
12 retrospectively, this too creates a new and unconstitutional protection for pre-  
13 1919 water rights that may have been forfeited and vested in others under the  
14 law existing prior to 1995. **Forfeiture and resultant changes in priority must**  
15 **be determined under the law as it existed at the time of the event alleged to**  
16 **have caused the forfeiture.**

17 *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 206, ¶ 17 (1999) (emphasis added).

18 THE COURT FINDS that the Arizona Supreme Court did **not** hold in *San Carlos* that  
19 the forfeiture provisions of the 1919 Water Code applied to pre-existing water rights. Indeed,  
20 the *San Carlos* decision provided no specific analysis of the applicability of statutory forfeiture  
21 to pre-1919 water rights. It merely concluded that the 1995 amendments that were before the  
22 court improperly applied a retroactive, substantive, new layer of protection not previously  
23 afforded by Arizona statutes.

24 The court's reference in the decision to "water rights that may have been forfeited and  
25 vested in others under the law existing prior to 1995" simply means: *to the extent a party is*  
26 *arguing that forfeiture may or may not have occurred*, the issue must be determined according  
27 to the law existing at the time of the events allegedly resulting in forfeiture. The court in *San*  
28 *Carlos* was focused entirely on whether the 1995 amendments were constitutional. The court  
did not decide – or even analyze – whether statutory forfeiture applied to pre-1919 vested  
rights. Because the Legislature intended the 1995 amendments to be applied retroactively, and  
because retroactive application would be applied to the detriment of junior appropriators, the

1 amendments violated the due process protections of Article 2, Section 4 of the Arizona  
2 Constitution.

3       Certain parties in the present case cited a case from the Ninth Circuit Court of Appeals,  
4 arguing that the case analyzed this issue and held that the *San Carlos* decision found pre-1919  
5 water rights to be subject to the forfeiture provisions of the 1919 Water Code. *See United*  
6 *States v. Gila Valley Irrigation District*, 859 F.3d 789 (9th Cir. 2017). As an initial matter,  
7 federal court decisions, with limited exceptions, are not binding on Arizona's state courts.  
8 More importantly, however, the cited Ninth Circuit opinion did not provide any substantive  
9 analysis of the issue; it merely assumed - erroneously - that the Arizona Supreme Court found  
10 in *San Carlos* that forfeiture applies to pre-1919 vested water rights. *Id.* at 807. The Court has  
11 already addressed that issue above.

12       Although not determinative, it is notable that the federal district court judge that the  
13 Ninth Circuit reversed in *Gila Valley* was none other than the Honorable Susan R. Bolton; the  
14 former Arizona General Stream Adjudication Judge who's ruling the Arizona Supreme Court  
15 affirmed in the *San Carlos* decision. Further notable is the fact that Judge Bolton - now  
16 serving on the federal district court - analyzed in her new role whether the Arizona Supreme  
17 Court in *San Carlos* actually determined the applicability of the 1919 Water Code to pre-  
18 enactment rights. Judge Bolton found: "[T]he Arizona Supreme Court did not consider in *San*  
19 *Carlos Apache Tribe*, or in any other case, ... whether the terms of the 1919 Water Code  
20 actually permitted the five-year provision to be applied to pre-1919 water rights[.]" *Order*  
21 *dated August 3, 2010 at p.38, United States v. Gila Valley Irr. Dist., D. Ariz., Case No. CV30-*  
22 *0061-TUC-SRB (Bolton, J.) ("Bolton Order")*. But the Ninth Circuit reversed Judge Bolton on  
23 this issue in the *Gila Valley* case, despite her intricate, first-hand knowledge of the *San Carlos*  
24 case, based upon the Ninth Circuit's misinterpretation of the *San Carlos* decision and its belief  
25 that the Arizona Supreme Court had already determined that forfeiture applies.

26       The *San Carlos* decision did not specifically determine whether the forfeiture  
27 provisions of the 1919 Water Code apply to pre-1919 vested water rights. The Court must  
28 therefore analyze whether the 1919 Water Code by its terms was intended to apply to pre-

1 existing rights.

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3 **II. Application of the 1919 Water Code to Pre-Existing Water Rights**

4 Sections 1 and 56 of the 1919 Water Code included an explicit statutory forfeiture  
5 provision and two savings clauses:

6 [W]henver hereafter the owner of a perfected and developed right shall cease or fail  
7 to use the appropriated water for a period of five (5) successive years the right shall  
8 thereupon cease and revert to the public and become again subject to appropriation  
9 in the manner herein provided. *But nothing herein contained shall be so construed  
as to take away or impair the vested rights which any person, firm, corporation, or  
association may have to any water right at the time of the passage of this Act.*

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10 *Nothing in this act contained, shall impair the vested rights of any person,  
11 association or corporation to the use of water.*

12 1919 Ariz. Sess. Laws, ch. 164, §§ 1, 56 (Reg. Sess.) (1919) (emphasis added).

13 The forfeiture provision in section 1 of the 1919 Water Code has continuously appeared  
14 in Arizona statutes since 1919 and is currently codified at A.R.S. § 45-141(C). The savings  
15 clause in section 1 of the 1919 Water Code was repealed in 1928, but the savings clause in  
16 section 56 remains codified at A.R.S. § 45-171.

17 The Court's primary goal when interpreting the 1919 Water Code, or any statute, is to  
18 give effect to the legislature's intent. *J.D. v. Hegyi*, 236 Ariz. 39, 40, ¶ 6 (2014); *see also*  
19 *Hampton v. Glendale Union High School District*, 172 Ariz. 431, 434 (App. 1992) (cardinal  
20 rule of statutory construction is that courts must primarily attempt to ascertain and give effect  
21 to the intent of the legislature). The Court's task in statutory construction is to effectuate the  
22 text if it is clear and unambiguous. *BSI Holdings, LLC v. Arizona Department of*  
23 *Transportation*, 244 Ariz. 17, 19 ¶ 9 (2018).

24 **THE COURT FINDS** that the forfeiture provisions of the 1919 Water Code were *not*  
25 intended to apply to pre-enactment vested water rights. The Code does not expressly state that  
26 its forfeiture provisions apply to pre-enactment rights. To the contrary, the Code contains two  
27 unambiguous savings clauses. Section 1 declares that "nothing herein contained shall be so  
28 construed as to take way or impair the vested rights which any person, firm, corporation or  
association may have to any water at the time of passage of this act." And Section 56 contains

1 similar yet more expansive language, which again precludes any interpretation that impairs or  
2 negatively affects vested rights or rights in the process of vesting.

3 Applying a subsequently enacted forfeiture provision to a pre-existing right – a right that  
4 was not previously subject to forfeiture – would, at a minimum, certainly “impair” the vested  
5 right in violation of these provisions. Such a provision is a new Damocles Sword hanging over  
6 the preexisting water right.

7 Moreover, the concept of forfeiture is strongly disfavored in Arizona, a fact that weighs  
8 heavily against any interpretation that applies newly enacted forfeiture provisions to pre-  
9 enactment rights in the absence of express language. It is well established in Arizona that  
10 “forfeitures are not favored by the law, and every reasonable presumption is against a  
11 forfeiture.” *De Almada v. Sovereign Camp, W.O.W.*, 49 Ariz. 433, 436 (1937); *see also Mason*  
12 *v. Hasso*, 90 Ariz. 126, 130 (1961) (“It is axiomatic that the law abhors a forfeiture.”); *Public*  
13 *Service Company of Oklahoma v. Bleak*, 134 Ariz. 311, 318 (1982) (“We recognize that the  
14 law abhors a forfeiture[.]”). Thus, in the absence of clear statutory language expressly  
15 applying a new forfeiture statute to existing property rights, the Court will not assume that the  
16 new forfeiture provisions apply to pre-enactment rights.

17 The Court is further persuaded by the recognition that in Arizona, “[w]ater rights are  
18 property rights.” *Matter of Rights to Use of Gila River*, 171 Ariz. 230, 235 (1992). Property  
19 rights, once vested, are jealously guarded in this state because “[t]he framers of our  
20 Constitution understood that one of the basic responsibilities of government is to protect  
21 private property interests.” *Bailey v. Meyers*, 206 Ariz. 224, 227, ¶ 11 (App. 2003). Indeed,  
22 Article 17, section 2 of the Arizona Constitution declared upon adoption in 1912 that “[a]ll  
23 existing rights to the use of any of the waters in the state for all useful or beneficial purposes  
24 are hereby recognized and affirmed.” Given Arizona’s strong support for the protection of  
25 property rights, the Court will not assume that a new forfeiture provision applies to pre-existing  
26 water rights in the absence of express language in the new statute.

27 Because the forfeiture provisions of the 1919 Water Code were not intended to apply to  
28 pre-enactment water rights, such rights can only be lost in accordance with the law that was in

1 place in Arizona before enactment in 1919.

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3 **III. Forfeiture Based Upon Non-Use At Common Law**

4 Having found that this issue was not resolved by the Arizona Supreme Court in *San*  
5 *Carlos*, and having further found that the forfeiture provisions in the 1919 Water Code were  
6 not intended to apply to pre-enactment water rights, the Court must determine whether  
7 forfeiture applied at common law, prior to enactment of the 1919 Water Code, to strip an  
8 appropriator of vested water rights based merely upon non-use.<sup>5</sup>

9 As an initial matter, forfeiture is materially different from the related concept of  
10 "abandonment," which requires a showing of an intentional and voluntary relinquishment of a  
11 known right. *Mason*, 90 Ariz. at 129. Unlike abandonment, forfeiture is involuntary and  
12 occurs without regard to intention. *Id.* Forfeiture is therefore more draconian in application.

13 Of the various Arizona decisions cited by the parties that predate the enactment of the  
14 1919 Water Code, the Court finds that the *Gould* case is the most relevant and compelling. *See*  
15 *Gould v. Maricopa Canal Co.*, 8 Ariz. 429 (1904). The Supreme Court for the Territory of  
16 Arizona issued the *Gould* decision in 1904, well before the enactment of the 1919 Water Code.  
17 *Gould* involved an individual landowner that irrigated his land from a diversion of the  
18 Maricopa Canal. Later, he stopped diverting and instead purchased water from a company that  
19 delivered water from the Canal. The issue before the court, *inter alia*, was whether Mr. Gould  
20 lost his vested right to water from the Maricopa Canal when he stopped diverting water from  
21 the Canal for his irrigation purposes and instead used a company to divert and deliver water.  
22 *Id.* at 447-48.

23 The Supreme Court held that *Gould* had not lost his vested water rights under those  
24 facts. In so holding, the Supreme Court was clear that under the law existing at the time, *Gould*  
25 could only lose his vested water rights through abandonment or adverse possession by another

26  
27 <sup>5</sup> Judge Bolton reached a similar conclusion in her aforementioned district court order,  
28 stating: "Arizona's forfeiture provision does not apply to pre-1919 water rights by the terms of  
the 1919 Water Code; pre-1919 water rights can only be lost in accordance with the law that  
was in place in Arizona before 1919." *Bolton Order* at 40.

1 party, unambiguously declaring: “[water rights] may be lost by abandonment, or it may be lost  
2 to another by adverse user on the part of the other continued for the period of the statute of  
3 limitations, *and in no other way.*” *Id.* at 448 (emphasis added). The Supreme Court then  
4 clarified that “[a]bandonment is a matter of intent,” *Id.*, and Gould had not demonstrated  
5 sufficient intent to abandon his water rights when he stopped diverting the water himself.

6 The *Gould* case, and its proclamation that there is “no other way” an appropriator may  
7 lose his water rights except through adverse possession or abandonment (with proper showing  
8 of intent), leaves no room for a finding that the common law stripped an appropriator of vested  
9 water rights through forfeiture based solely on non-use.

10 The other pre-1919 Arizona cases cited by the parties are not helpful to the analysis  
11 because they either focus upon the *acquisition* of a water right or they involve the doctrine of  
12 *adverse possession*, both of which are analyzed according to different standards. They do not  
13 involve the application of strict forfeiture at common law based upon non-use.

14 **THE COURT THEREFORE FINDS** that vested water rights that predated the 1919  
15 Water Code could be lost through either abandonment or through adverse possession, but *not*  
16 through forfeiture.

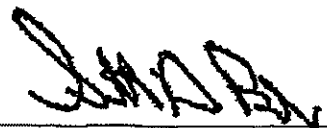
17 **THE COURT FURTHER FINDS** that water rights acquired prior to enactment of the  
18 1919 Water Code are not subject to statutory forfeiture, regardless of whether that non-use  
19 occurred after the enactment of the 1919 Water Code. Such pre-enactment rights may only be  
20 lost through abandonment or adverse possession unless and until the Legislature expressly  
21 expands the forfeiture provisions to apply to pre-1919 vested rights.

22 **THE COURT FURTHER FINDS** that to the extent any right to water exists for the  
23 purpose of irrigating 17.5 acres of land on the west side of Terisha Driggs’s Property, that right  
24 has not been forfeited due to non-use.

25  
26 On good cause, and in the Court’s discretion,  
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**IT IS THEREFORE ORDERED** modifying and replacing in part the November 18, 2021 *Report of the Special Master* consistent with the Findings, Conclusions, and related analysis herein.



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The Honorable Scott A. Blaney  
Arizona Superior Court in Maricopa County

## **EXHIBIT 2**

MAR 26 2026 @ 4:27 p.m.

A Marrufo, Deputy

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION  
OF ALL RIGHTS TO USE WATER IN  
THE GILA RIVER SYSTEM AND  
SOURCE

W1-00-001234 (Consolidated)

Contested Case No. W1-11-000245 ✓  
(Consolidated with contested case nos. W1-  
11-003359 and W1-11-003397)

ORDER TO ADOPT FINAL REPORT  
WITH CLARIFICATIONS

CONTESTED CASE NAME: *In re Town of Huachuca*  
*In re Whiting Ranches* (consolidated)  
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report  
DESCRIPTIVE SUMMARY: Special Master Harris's final report, dated September 23,  
2021, is adopted in full with clarifications as indicated.  
NUMBER OF PAGES: 7  
DATE OF FILING: March 26, 2026

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 12, 2019, Special Master Harris initiated contested case *In re Town of Huachuca*, case no. W1-11-0245. See W1-11-0245, Order to Initiate Contested Case (June 12, 2019). Case W-11-0245 was set to determine rights to use water from five wells,

1 two of which the relevant Watershed File Report (“WFR”) indicates are in the San Pedro  
2 River subflow zone.<sup>1</sup> On August 7, 2019, Special Master Harris initiated and consolidated  
3 contested cases *In re Whiting Ranches*, case nos. W1-11-3397 and W1-11-3359. *See* W1-  
4 11-3397, Order to Initiate Contested Case (August 7, 2019). Case W-11-3397 was set to  
5 determine rights to use water from three wells, two of which the relevant WFRs indicate  
6 are in the San Pedro River subflow zone.<sup>2</sup> On January 15, 2020, Special Master Harris  
7 consolidated these cases in order to resolve two legal issues in common. *See* W1-11-0245,  
8 Minute Entry (February 20, 2020).

9 On June 18, 2020, Special Master Harris designated two “Issues of Broad Legal  
10 Importance” in the consolidated cases. *See* W1-11-0245, Notice (June 18, 2020). Pursuant  
11 to the Rules of Proceedings Before the Special Master section 12.00, Special Master  
12 Harris provided notice of this designation to all members of the Gila River and Little  
13 Colorado River Court-approved mailing lists. *Id.* The Special Master subsequently set a  
14 deadline of January 11, 2021, for responses addressing the merits of the issues from any  
15 claimant in the adjudications. W1-11-0245, Minute Entry (July 30, 2020). The June 18,  
16 2020, notice framed the issues as follows:

- 17 1. Is the process set out in the 1919 Arizona Surface Water Code and  
18 subsequent versions of that statute the exclusive method for a well  
19 owner who has filed a statement of claimant under A.R.S. § 45-254 to  
20 obtain an appropriative water right in Arizona for water pumped from a  
21 well located in the subflow zone with a priority date after June 12, 1919?
- 22 2. Does the adjudication court have equitable powers to decree an  
23 appropriative water right for a claimant who began withdrawing water  
24 from a well located in the subflow zone after June 12, 1919, but did not  
25 comply with the 1919 Arizona Surface Water Code and subsequent  
26 versions of that statute?

27 <sup>1</sup> WFR# 111-20-050 - Final San Pedro River Watershed Hydrographic Survey Report (1991).

28 <sup>2</sup> WFR# 115-05-036 - Final San Pedro River Watershed Hydrographic Survey Report (1991).

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After receiving responses regarding the designated issues, the Special Master set an evidentiary hearing beginning on April 26, 2021 to find facts related to Issue #2 and to provide context to the legal controversy. W1-11-0245, Minute Entry (Mar. 2, 2021). The evidentiary hearing was not intended to, and did not, constitute an adjudication of any potential water rights of the Town of Huachuca City and Michael and Susan Cavender.

On September 23, 2021, Special Master Harris filed her final report regarding the issues of broad legal importance. W1-11-0245, Report of the Special Master (“Final Report”) (September 23, 2021). In the Final Report, the Special Master set November 22, 2021 as the deadline to file objections and January 4, 2022 as the deadline to file responses to objections. Various parties filed objections to the Final Report and responses to those objections. The following brief description of the Special Master’s work is intended to aid in understanding the Court’s rulings and modifies the Special Master’s findings and conclusions only where specifically noted.

**LEGAL ISSUES**

**I. Issue 1 - Legal Basis for Appropriable Water Right**

The Special Master’s Final Report summarizes the evolution of the required process to establish Arizona state water rights over the past century. Final Report at 3–6. Arizona has adopted the doctrine of prior appropriation to govern a person's legal rights to use water from a broad range of appropriable water sources. *Phelps Dodge Corp. v. Arizona Department of Water Resources*, 211 Ariz. 146, 149 (App. 2005); *Slosser v. Salt River Valley Canal Co.*, 7 Ariz. 376 (1901). Between 1893 and 1919, an appropriator could establish a legal right to water by posting and filing a notice of intent with the county recorder and putting the water to a beneficial use within a reasonable time, or the appropriator could simply put the water to a beneficial use. *Phelps Dodge Corp.*, 211

1 Ariz. at 149 ¶ 16. On June 12, 1919, the Arizona Legislature changed the process and  
2 the requirements for the acquisition of an appropriative water right when it enacted the  
3 Arizona Surface Water Code (the "1919 Code"). The 1919 Code stated: "[t]he water of  
4 all natural streams, or flowing in any canyon, ravine or other natural channel, or in definite  
5 underground channel, and of springs and lakes, belongs to the public, and is subject to  
6 beneficial use as herein provided." A.R.S. § 45-141.

7 The 1919 Code introduced new procedures to legally appropriate water. No longer  
8 did the law allow a person to establish a right to appropriable water simply by putting the  
9 water to a beneficial use. The 1919 Code required a person to file an application with the  
10 appropriate state agency. Subsequent amendments to the 1919 Code consistently retained  
11 the requirement that a person or entity must file an application with the state agency to  
12 acquire a legal right to appropriable water. *See* Ariz. Code Ann. § 75-105 (1939).

13 By naming subflow as a source of appropriable water, the Arizona Supreme Court  
14 implicitly ruled that diversions of subflow initiated after June 12, 1919 are subject to the  
15 1919 Code. *Maricopa County Mun. Water Conservation Dist. No. I v. Southwest Cotton*  
16 *Co.*, 39 Ariz. 65 (1931), *reh'g denied and opinion modified*, 39 Ariz. 367 (1932). The  
17 Arizona Supreme Court affirmed that holding four more times.<sup>3</sup> By retaining the  
18 definition of appropriable water found in the 1919 Code, subsequent legislatures have  
19 affirmed the conclusion in *Southwest Cotton*. Therefore, objections to the Special  
20 Master's Final Report citing the absence of an explicit reference to subflow in section 45-  
21 141 are not persuasive. Objections that *Southwest Cotton* does not apply to the Water  
22 Code because the case concerned only appropriations made prior to 1919 are also in error  
23 by similar reasoning.

24 In addition to concluding that those who initiate uses of subflow after 1919 are  
25 subject to the 1919 Code, the Special Master also correctly concluded that the Code is the

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27 <sup>3</sup> See *Bristor v. Cheatham*, 75 Ariz. 227, 238 (1953); *In re General Adjudication of All Rights to Use Water in the*  
28 *Gila River System and Source*, 175 Ariz. 382, 391 (1993) (*Gila II*); *In re General Adjudication of All Rights to*  
*Use Water in the Gila River System & Source*, 195 Ariz. 411, 415 ¶ 8 (1999) (*Gila III*); *In re General Adjudication*  
*of All Rights to Use Water in the Gila River Sys. & Source*, 198 Ariz. 330, 333 ¶ 1 (2000) (*Gila IV*).

1 exclusive means by which those water users may obtain appropriative right. W1-11-0245,  
2 Final Report at 3–13 (September 23, 2021). The Court adopts the Special Master’s  
3 conclusion that, although the Water Rights Registration Act “allows a person to file a  
4 claim for water rights [with] a legal basis under existing law. . . . it contains no provision  
5 for the creation of a legal basis.” *Id.* at 9.

6 **IT IS ORDERED** adopting Conclusions of Law 1–6 with the clarification that  
7 any references to "well owner" in the Special Master’s Final Report, and in this order,  
8 exclude wells serving as points of diversion for federal reserved water rights.

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10 **II. Issue 2: Equitable Relief**

11 The second issue of broad legal importance is whether the Court may equitably  
12 decree appropriable water rights to owners of wells who are subject to, but failed to  
13 comply with the 1919 Code. As the Special Master correctly concluded, the Superior  
14 Court of Arizona does generally possess equitable authority, but that equitable authority  
15 should only be exercised when the law permits. Final Report at 14 (citing *Sertich v.*  
16 *Moorman*, 162 Ariz. 407, 412 (1989).

17 As stated previously, since 1919, statutes govern the acquisition of appropriative  
18 water rights. The statutes are the sole mechanism for obtaining a water right, and equity  
19 does not provide an exception for owners of wells who took no action to file an  
20 application and obtain a permit to appropriate water, even where they relied on the  
21 presumption that their wells pumped groundwater. *Id.* at 19.

22 Equally important, an equitable decree would impermissibly diminish the value of  
23 junior appropriative rights. Such a decree would prejudice all other claimants on the  
24 stream by upsetting other claimants’ expectations of priority. Final Report at 20 (citing  
25 *Phelps Dodge Corp. v. Ariz. Dep’t of Water Res.*, 211 Ariz. 146, 148 (App. 2005).  
26 Accordingly, such a grant could cause a taking.

1           Ultimately, the Special Master is correct that the Adjudication Court does not have  
2 the power to equitably decree an appropriative water right “if such a decree means an  
3 excuse from compliance with the law.” Final Report at 19.

4           **IT IS ORDERED** adopting Conclusions of Law 7–10 and Finding of Fact 7 as  
5 written.<sup>4</sup>

6 **FACTUAL FINDINGS**

7           As discussed above, the Special Master conducted an evidentiary hearing  
8 beginning on April 26, 2021 in order to provide context to the legal controversy. W1-11-  
9 0245, Minute Entry (Mar. 2, 2021). Objectors raised questions as to the relevance and  
10 propriety of notice of the hearing.

11           First, the Final Report, though issued in consolidated cases W1-11-3397 and W1-  
12 11-0245, did not resolve the specific claims or objections in these cases. While the  
13 ultimate decision here rests on only some of the Special Master’s findings of fact, the  
14 Special Master had sufficient rationale for all of her findings of fact. Accordingly, the  
15 Court approves those findings.

16           Second, some objectors incorrectly claim that the Special Mater did not provide  
17 adequate notice of the evidentiary hearing. The Special Master issued the Notice of  
18 Designation of an Issue of Broad Legal Importance as required by the Rules for  
19 Proceedings Before the Special Master section 12.03 on June 18, 2020. At that time, any  
20 interested party could have timely intervened. Further, as noted below, the Court’s  
21 decision ultimately does not turn on the bulk of the factual record. Accordingly, the Court  
22 rejects objectors’ arguments regarding notice of the evidentiary hearing.

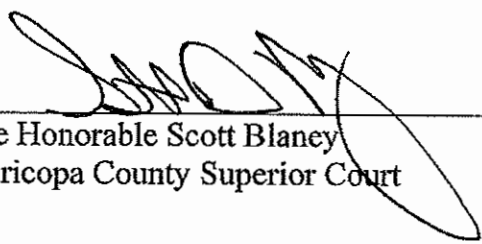
23           **THE COURT FINDS** that Findings of Fact 1–6 are irrelevant to the issues of  
24 broad legal importance at issue in these cases. This includes findings regarding the  
25 current streamflow conditions on the relevant reaches of the San Pedro River.

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27 <sup>4</sup> While some parties object to the Special Master’s reference in her Conclusion of Law #7 to an evidentiary  
28 presumption that a well located outside the subflow zone is pumping percolating groundwater, the Court notes that the Adjudication Court and the Supreme Court of Arizona have previously recognized that a well located outside the subflow zone is presumed initially to be pumping percolating groundwater. *Gila IV*, 198 Ariz. 330, 343 (2000).

1           **IT IS THEREFORE ORDERED** referring contested cases W1-11-3397 and  
2 W1-11-0245 to the Special Master in order to resolve the specific claims and objections  
3 in those cases consistent with Findings of Fact 1–6 of the Special Master’s Final Report.

4           **IT IS FURTHER ORDERED** that adjudication of these contested cases should  
5 be stayed until the Subflow Depletion Test is finalized. The cases may be deconsolidated  
6 as the Special Master finds appropriate.

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The Honorable Scott Blaney  
Maricopa County Superior Court

On March 26, 2026, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing lists for these contested cases and the Court-approved mailing lists for W1–W4 and CV 6417.