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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.¹ 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.² 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

¹ WFR# 111-20-050 - Final San Pedro River Watershed Hydrographic Survey Report (1991).

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

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

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

16
17 **LEGAL ISSUES**

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

19 The Special Master’s Final Report summarizes the evolution of the required
20 process to establish Arizona state water rights over the past century. Final Report at 3–6.
21 Arizona has adopted the doctrine of prior appropriation to govern a person's legal rights
22 to use water from a broad range of appropriable water sources. *Phelps Dodge Corp. v.*
23 *Arizona Department of Water Resources*, 211 Ariz. 146, 149 (App. 2005); *Slosser v. Salt*
24 *River Valley Canal Co.*, 7 Ariz. 376 (1901). Between 1893 and 1919, an appropriator
25 could establish a legal right to water by posting and filing a notice of intent with the
26 county recorder and putting the water to a beneficial use within a reasonable time, or the
27 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.³ 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

26 ³ See *Bristor v. Cheatham*, 75 Ariz. 227, 238 (1953); *In re General Adjudication of All Rights to Use Water in the*
27 *Gila River System and Source*, 175 Ariz. 382, 391 (1993) (*Gila II*); *In re General Adjudication of All Rights to*
28 *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.

9
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.⁴

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.

26
27 ⁴ 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).

