

1
2
3
4
5
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA
8

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

W-1, W-2, W-3, W-4 (Consolidated)

Contested Case No. **W1-11-1214**

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**ORDER ON MOTION FOR
CLARIFICATION**

CONTESTED CASE NAME: *In re Robert S. and Judi MacNeil*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report

DESCRIPTIVE SUMMARY: Updated WFRs shall be referred to as “amended.” A status report from the Arizona Department of Water Resources regarding Water Rights Registration Act filings for this contested case is due **November 1, 2025**.

NUMBER OF PAGES: 6

No distinction intended between “revised” and “amended”

On March 4, 2025, the Arizona Department of Water Resources (“ADWR”) was ordered to file a status report on the agency’s progress processing the statement of claimant (“SOC”) and pre-adjudication filings submitted regarding this contested case, including a timeline for completion where appropriate. The ADWR status report was filed May 1, 2025, and requested clarification regarding the Special Master’s use of *revised* Watershed File Report (“WFR”) versus an *amended* WFR.

No distinction was intended by using a different term. In all cases, the Special Master was requesting that ADWR provide a WFR with updated information about

1 potential claims, such as updated SOC numbers, updated pre-adjudication filing numbers,
2 and updated points of diversion or points of use. A review of the usage of both terms
3 reveals that “amended” was the prior term used and “revised” is a fairly recent interloper
4 that will be discontinued moving forward.

5 **IT IS ORDERED** there is no difference between a request for a “revised” WFR
6 and an “amended” WFR. “Amended” is the selected term to be used moving forward.

7
8 **WFRs must present accurate information**

9 Derivative to the initial question, clarification around the purpose of requesting an
10 amended WFR also appears necessary. ADWR indicates that “[g]enerally, ADWR views
11 each WFR as the starting point, rather than ending point, of the adjudication of water
12 rights and does not believe it necessary for the attributes listed in the WFR to match those
13 listed in the abstract entered in the Catalog of Proposed Water Rights (“Catalog”).”¹ The
14 agency points to § 16.02 of the Rules for Proceedings Before the Special Master
15 (“Rules”), and comments “the attributes as specified in the WFR are only mentioned as
16 the basis for the attributes listed in an abstract in the Catalog when there were no objectors
17 to the WFR.”² ADWR then suggests “it may not be necessary for ADWR to prepare an
18 amended WFR whenever an attribute in the WFR does not match an attribute in the
19 proposed abstract.”³

20 ADWR suggests amended WFRs only in cases where the claims as they exist at
21 case initiations are so substantively different from the claims as they existed at the
22 issuance of the original HSR to render any notice of the claims inadequate. If the **only**
23 purpose of the WFR was to provide notice, this characterization by ADWR would be
24 appropriate. However, in addition to WFRs without objections, should such a mythic
25 beast actually exist, potential water rights that are summarily adjudicated rely on the WFR

26
27

¹ W1-11-1214, Arizona Department of Water Resources Status Report (May 1, 20250 at 5.

28 ² *Id.*

³ *Id.*

1 as the sole evidentiary record and therefore must match the associated WFR. Beyond the
2 “starting point” that defines a potential *de minimis* use, the WFR is the evidentiary record
3 of basis of right, point of diversion, and point of use attributes. Priority dates for *de*
4 *minimis* uses in all three watersheds with summary adjudication procedures will be “the
5 apparent date of first use as listed in the potential water rights sections of the watershed
6 file report.”⁴ And finally, pursuant to Ariz. Rev. Stat. §45-256(F), claimants can “rely on
7 the [watershed file] report as evidence of their water right.”

8 For this contested case, an amended WFR is appropriate. In this case, a new Water
9 Rights Registration Act filing (“36-filing”) has been submitted to ADWR. The 36 filing
10 was not identified in the original WFR. Before the Court can approve a *de minimis*
11 abstract based on the domestic potential water right (“PWR”) identified in WFR No. 111-
12 24-085. ADWR must evaluate whether the 36-filing may support the *de minimis* PWRs
13 identified in WFR 111-24-085. As discussed above, attributes in a *de minimis* abstract
14 must be corroborated by the associated WFR.

15 16 **Scope of Amended WFR 111-24-085**

17 Two Statements of Claimant are at issue in this contested case: 39-17527, filed by
18 Karl F. Schmitt and Patrick J. Dome Revocable Living Trust, and 39-6364, filed by
19 Joseph J. Coffel. Because Statement of Claimant 39-17527 does not present any claim
20 substantially related to a claim or use identified in WFR No. 111-24-085, that Statement
21 of Claimant will be investigated in San Pedro River HSR II. In its amendment to WFR
22 111-24-085, ADWR shall investigate only Statement of Claimant 39-6364.

23
24
25 ⁴ W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for
26 Group 1 Cases Involving Stockwatering, Stockponds, and Domestic Uses (Nov. 14,
27 1994) at 42; CV 6417-400, Report of the Special Master on Summary Proceedings in
28 the Lower Little Colorado Subwatershed (October 30, 2020) at 21; CV 6417-33-9005R,
Report of the Special Master on Summary Proceedings in the Silver Creek Watershed
(August 23, 2020) at 21.

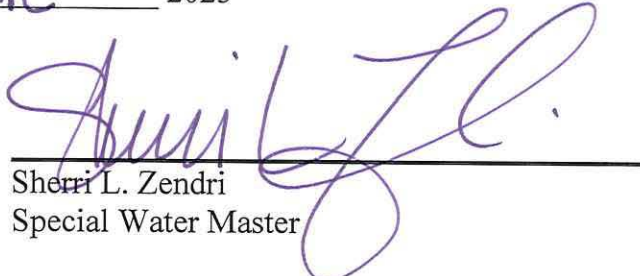
1 **Updates on processing**

2 As a final matter, ADWR expressed an inability to provide an accurate estimation
3 of the amount of time to complete processing for new "36 filings" due to a high volume
4 of applications in the queue. As an alternative, ADWR proposes to provide a status
5 update when the filings have been processed or, on November 1, 2025, whichever comes
6 sooner. ADWR appears to feel the agency will be able to provide a deadline for
7 completing processing by November 1, 2025. ADWR requested in the May 1, 2025, status
8 report 120 days (from May 1) to complete a WFR should the Court find it is necessary.

9 **IT IS ORDERED** that ADWR shall provide a status update when the filings have
10 been processed or by **November 1, 2025**, whichever comes sooner.

11 **IT IS FURTHER ORDERED** that ADWR will provide an amended WFR thirty (30)
12 days after the filings have been processed. If the filings have still not been processed by
13 November 1, 2025, ADWR will provide a deadline when processing will be complete
14 and an amended WFR to be filed no more than thirty (30) days after all filings have been
15 processed.

16 Signed this 2nd day of June 2025

17
18
19
20 
21 Sherri L. Zendri
Special Water Master

22 On June 2, 2025, the original of
23 the foregoing was delivered to the Clerk of the
24 Maricopa County Superior Court for filing and
25 distributing a copy to all persons listed on the Court-
approved mailing list for this contested case.

26 
27 Emily Natale
28

Court Approved Mailing List
In re Robert S. and Judi MacNeil, Contested Case No. W1-11-1214
W1-11-1214 (16 Names)
Prepared by the Special Master
6/2/2025

Alexander B. Ritchie
San Carlos Apache Tribe
Office of the Attorney General
PO Box 40
San Carlos, AZ 85550

J. B. Weldon, M. A. McGinnis,
M. K. Foy
Salmon, Lewis & Weldon
2850 E. Camelback Rd. Suite
200
Phoenix, AZ 85016

Amanda Eubanks
United States Dept. of Justice -
ENRD
P.O. Box 7611, Ben Franklin
Station
Washington, DC 20044

Javier Ramos & Michael Carter
Gila River Indian Community
Office of the General Counsel
P. O. Box 97
Sacaton, AZ 85147

Clerk of the Superior Court
Maricopa County
Attn: Water Case
601 West Jackson Street
Phoenix, AZ 85003

Jeremiah Weiner, Brett Stavin,
Jay Lee
ROSETTE, LLP.
120 S. Ash Avenue, Suite 201
Tempe, AZ 85281

D. Brown, J. Brown, A. Brown
G Perkins, B. Heiserman, B.
Pew
Brown & Brown Law Offices
P.C.
PO Box 1890
St. Johns, AZ 85936

Joe P. Sparks and Laurel A.
Herrmann
The Sparks Law Firm, P.C.
7503 First Street
Scottsdale, AZ 85251-4573

David Gehlert
United States Dept. of Justice -
ENRD
999 18th Street, N. Terrace,
Ste. 600
Denver, CO 80202

Josh Edelstein Phoenix Field
Solicitor
Office of the Solicitor
U.S. Department of the Interior
Sandra Day O'Connor U.S.
Courthouse
401 W. Washington St., Ste.
404, SPC 44
Phoenix, AZ 85003

Galbut Beabeau P.C.
Vantage Retirement Plans,
LLC
6720 N Scottsdale Road Suite
305
Scottsdale, AZ 85253

Karen J. Nielsen
Arizona Dept. of Water
Resources
1110 West Washington, Suite
310
Phoenix, AZ 85007

Mark J. Widerschein
United States Dept. of Justice -
ENRD
Natural Resources Section
PO Box 7611
Washington, DC 20044

Merrill C. Godfrey and Brette A.
Pena
Akin Gump Straus Hauer &
Feld LLP
2001 K Street, N.W.
Washington, DC 20006

Susan B. Montgomery, Robyn
Interpreter
Montgomery & Interpreter PLC
3301 E. Thunderbird Road
Phoenix, AZ 85032

Sherri L. Zendri
Special Master
Central Court Building, Ste 3A
201 West Jefferson
Phoenix, AZ 85003-2205