

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

March 27, 2025

CLERK OF THE COURT
A. Parmar
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

In Re The General Adjudication of
All Rights to Use Water in the Gila
River System and Source
W-1, W-2, W-3, W-4 (Consolidated)

FILED: April 4, 2025

In re: Thomas E. and Elaine G. Byfield
Contested Case No. W1-11-1477

MINUTE ENTRY

Courtroom 301 – Central Court Building

10:31 a.m. This is the time set for a Status Conference to determine whether the property owners are interested in pursuing water rights before the Special Water Master Sherri Zendri.

The following parties/attorneys appear virtually through Court Connect:

- Property Owner, Elaine G. Byfield, is present on her own behalf
- Katrina Wilkinson on behalf of the Salt River Project (“SRP”)
- Merrill C. Godfrey on behalf of the Gila River Indian Community (“GRIC”)
- Laurel Herrmann and Jana Sutton on behalf of the San Carlos Apache Tribe
- Alexandra Corcoran-Shannon (paralegal for Susan Montgomery) observing on behalf of the Yavapai Apache Nation and the Pascua Yaqui Tribe
- Alexa Penalosa and Laura Boyer on behalf of the United States Department of Justice
- John Burnside on behalf of BHP Copper

- Kaitlyn Smith on behalf of American Smelting and Refining Company (“ASARCO”)
- Karen Nielsen on behalf of the Arizona Department of Water Resources (“ADWR”)
- Denise Riden observing on behalf of the Cochise County Attorney’s Office
- Jay Lee observing on behalf of the Tonto Apache Tribe
- David Brown on behalf of St. David Irrigation District and C-Spear LLC

A record of the proceedings is made digitally in lieu of a court reporter.

The Court provides the purpose and background for these proceedings to Ms. Byfield.

Discussion is held regarding the Statement of Claim and Statement of Claimant. Mrs. Byfield indicated that the well was put in by Mr. Hensley but about two weeks ago he submitted a transfer to ADWR.

Mrs. Byfield indicates that she uses a well for domestic use but does not want to exclude stock and irrigation use because she owns 10 acres and does not want to hamper any use for a future buyer.

Counsel Wilkinson inquires if the Court will address the priority dates for Mrs. Byfield and notes that the original states June 10, 1978. The Court will address that at the next meeting but will include additional information about priority dates in today’s Minute Entry.

Based on the matters presented,

IT IS ORDERED that Mrs. Byfield ensure the Statement of Claim and Statement of Claimant have been updated and assigned to her and not Mr. Hensley. She must update the Statement of Claim to reflect what the current use is. This must be submitted to ADWR on or before **June 30, 2025**.

IT IS FURTHER ORDERED that ADWR file a Status Report regarding processing on or before **August 29, 2025**. The Court will schedule the next hearing by separate order once it has reviewed the report.

The Court will send documentation after this meeting and instructs Mrs. Byfield to read the information provided by the Court as it will contain relevant information to this proceeding.

10:49 a.m. Matter concludes.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.

LATER:

The following information is provided for the convenience of potential claimants.

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

However, case law as a result of Arizona’s General Stream Adjudication has developed the legal concept of “subflow” - water that flows underground, but exists so close to, or reacts so directly with, a surface stream that the water is actually a part of that surface stream and not a separately distinguishable groundwater source. In 1993, the Arizona Supreme Court agreed that subflow can be regulated as surface water, and wells located within the subflow zone are presumed to be pumping surface water. Development of the subflow zone for any particular Arizona river system is a multiple year endeavor completed by the Arizona Department of Water Resources (ADWR) with cooperation from the Arizona Geological Survey. The April 2014 Revised Subflow Delineation for the San Pedro River, as well as documents prepared by the ADWR as part of the November 1991 Hydrographic Survey Report (“HSR”) and can be found on the ADWR website at:

<https://www.azwater.gov/adjudications>

To pursue water rights, a property owner must **both** file a Statement of Claimant, and present to the Court evidence of a legal right to the water they claimed on the Statement of Claimant. If the property owner proves to the Court the existence of a legal water right on their property, the Court will recognize enforceable water rights in a “Final Decree.” ARS § 45-257(B). Parties wishing to move forward with historical water rights claims on their property must ensure Statement of Claimants are current and that documentation of the reason the claim to the water is legally valid, also known as the “basis of right,” is presented to the Court. Additionally, claimants must be able to document the use of the water had not been suspended for any period of five (5) successive years since the use began.

1) Statement of Claimants (SOCs)

An SOC is a landowner’s (“claimant’s”) written statement to the Court that provides details about their water right claim. This claim to use public water is filed with the Arizona Department of Water Resources (“ADWR”). Although a water right generally remains attached to the land, the SOC must reflect the current claimant’s name and contact information as well as any changes to the original claim. The SOC as filed does not list current property owners or lessees. To update an SOC, parties may make an SOC amendment, obtain a SOC assignment from the original claimant, or file a new SOC for their use. See Ariz. Rev. Stat. §§ 45-254. Forms may be found on ADWR’s website at:

<https://www.azwater.gov/adjudications/statement-claimant-new-use-summons-forms>

2) Basis of Right

To obtain a water right, a claimant with a well in the subflow zone must also provide a “basis of right.” To begin this process, the claimant must file a document with ADWR either registering a water right or applying for a permit to appropriate water. See Arizona Revised Statutes (“Ariz. Rev. Stat.”) §§ 45-182(A) or 45-152(A).

If a claimant proves that the water right claimed was initiated prior to June 12, 1919, they do not need to file an “application for a permit to appropriate,” but must present a statement of claim registering their claimed water right and filed prior to, (90 days before the publication of the San Pedro HSR). See Ariz. Rev. Stat. §§ 45-171, 45-182(A). *Note that a statement of claim is a different document than a statement of claimant.*

ADWR can help the current property owners determine if former Claimants properly registered the potential water rights claimed on the SOC's for this contested case. If a claimant either cannot prove that the water right claimed was initiated prior to June 12, 1919, or cannot present a statement of *claim* filed prior to August 22, 1991, the claimant must file either an “application for a permit to appropriate public water” Ariz. Rev. Stat. §§ 45-152(A).

Because of the time and cost involved in pursuing an “application for a permit to appropriate public water” or an “application for a stockpond claim of right,” claimants should first gather as much evidence as possible to determine which, if any, of their water rights claims are for water uses initiated prior to June 12, 1919, and described in a timely filed statement of *claim*.

Federal land entry case files (e.g. homestead proofs and affidavits) may be useful for proving historical farming and grazing activity on your land. Resources for finding land entry filings are listed below:

- Federal land patents may be found here: <https://glorerecords.blm.gov/search/default.aspx>
- Pre-1908 homestead proofs may be accessed from a physical FamilySearch location. See <https://locations.familysearch.org/en/search> for more information.
- Any other land entry case files can be ordered using the following form: <https://www.archives.gov/forms/pdf/natf-84.pdf>.

3) Objections to Potential Water Rights Claims

Objections for this contested case were filed when ADWR published its findings. Claimants are encouraged to review these objections when filing pre-adjudication documents as some objections may be resolved simply by providing additional

information. Objections for this contested case can be found on the General Stream Adjudication website under “Active Cases” at:

<https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-1477-Objections.pdf>

4) ADWR Contact Information

- Statements of claimant application and processing - 1-866-246-1414
 - Email: smitchell@azwater.gov
 - website: <https://www.azwater.gov/adjudications>
- Groundwater Well Registration – (602) 771-8527
 - Email: wells@azwater.gov
 - website: <https://www.azwater.gov/permitting-wells>
- Surface Water Permitting (Basis of Rights) – (602) 771-8621
 - Email: surfacewater@azwater.gov
 - website: <https://www.azwater.gov/surface-water/surface-water-overview>

University of Arizona - Arizona Adjudications Project

While it is not necessary, Claimants are free to seek their own legal counsel at any time should they decide to do so. In addition, The Arizona Adjudications Project is taking applications to provide free, limited legal representation in the adjudication. The team can help claimants who are not already represented by an attorney. You can apply for assistance here:

<https://law.arizona.edu/academics/clinical-programs/natural-resource-use-management-clinic/arizona-adjudications-clinic>.

To contact the University of Arizona Adjudications Project call (520) 621 6722 or via email at: law-azadjudicationsproject@arizona.edu.

To contact the Office of the Special Water Master please call (602) 372-4115.