

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

August 28, 2025

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

N. Johnson
Deputy

In Re: ASLD – Fred and Carol Telles
Contested Case No. W1-11-1511

FILED: September 4, 2025

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

In re: Oral Argument

MINUTE ENTRY

Central Court Building – Courtroom 301

8:58 a.m. This is the time set for Oral Argument before Special Water Master Sherri Zendri.

The following parties are present as follows:

- Eric Wilkins and Kevin Crestin for Arizona State Land Department (“ASLD”)
- Katrina Wilkinson and Michael Foy for the Salt River Project (“SRP”)
- Karen Nielsen, Paul Alder, and Faith Shelton for the Arizona Department of Water Resources (“ADWR”)
- Joe Sparks and Laurel Herrmann for San Carlos Apache Tribe
- Susan Montgomery for Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- Michael Carter for the Gila River Indian Community
- Charles Cahoy for the City of Phoenix
- Brad Pew, Brian Heiserman, and Steven Brophy for Aztec Land and Cattle Company, et al.
- Lee Storey for the City of Flagstaff and Baca Float LLC
- Jenny Winkler for the City of Chandler
- Mark Widerschein for the United States Department of Justice

- Michael Rolland for the Cities of Avondale, Gilbert, Mesa, Scottsdale, and Tempe

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

The Special Master thanks everyone for their attendance and reminds everyone that the Arizona Department of Water Resources (ADWR) is not on trial. Due to case law, the Special Master must permit the parties to attend if she asks questions of the agency.

The Court addresses the parties regarding ADWR's participation in today's hearing. The Court states that ADWR's process is vitally important to how this matter moves forward. The Court further states that it believes the practical problem that needs to be solved is whether requiring a stock pond to be certified before it can be put in the catalog will cause a delay due to a backlog of claims that need to be certified.

The Special Master asks ADWR why there is such a large backlog of stockpond claims that need certified?

Ms. Nielsen presents demonstrative slides that provide the following data regarding the number of Stockpond Registration Act filings by groupings of years.

- 1977 to 1979 - 20,818 filings (from ASLD)
- 1980 to 2025 - 1,984 (ADWR established in 1980)
- 3,275 or 14% have been certificated
- substantial review on at least 9,472 (file had been noticed or noted as potentially conflicted; possibly a duplicate filing)
- 44% unverified may have been looked at but no action codes in the ADWR database

During ADWR's time 12,747 or an average of just over 283 stock ponds have been reviewed per year since 1980.

Currently ADWR has 8 total staff members reviewing all surface water filings, which is the most ever, so simply speaking it is just an overwhelming number of applications to file and review.

The Special Master asks ADWR if there is any kind of plan within the agency to manage the backlog?

Paul Alder, surface water section manager for ADWR, states that ADWR tries to set time aside for "legacy" applications so everybody within surface water has time to grab these, review them. He further states that when they do get requests for assignments, the agency makes a list of all the surrounding stock ponds in the area that have not yet been certificated so that the trip is as productive as possible.

The Special Master asks ADWR if they are prioritizing those legacy applications based upon watersheds, specifically watersheds that are actually part of an adjudication at the moment?

Mr. Alder indicates that currently they are not.

The Special Master inquired if ADWR ever evaluated how much time it takes to do a single application? The agency stated it takes about four months if everything goes smoothly.

A discussion is had regarding “touch time” versus “elapsed time” with respect to the process. The Special Master suggests the agency consider a deeper process analysis to establish touch time.

ADWR explains the noticing procedure, indicating for new stock ponds under the licensing time frame notice is online and physically posted at the county. The exact location of the physical notice depends on the county. For legacy applications an email that goes to a watershed subscribers list

There is discussion on the 60-day notice period. There is no specific time period required in rule or statute. ADWR indicates “it has always been 60-days.” The agency had no additional explanation or reason where the 60-day timeframe originated.

The Special Master inquires why the stockpond review process is not in a rule or policy. There is discussion about previous attempts to make rules in the 1990s that failed. Ms. Nielsen states their process follows the statutes and is not arbitrary because every stock pond has been treated the same time over the last 45 years.

The Special Master indicates every stock pond has not been treated over the same over the last 45 years because many of them don't have the certificates required by statute, and the statute does not require 60-day notice. The statute also does not require an on-site inspection.

Mr. Alder states approximately 98% of the applications have incorrect information that is only corrected through field inspections. He notes the ponds are always less than the stated amount.

The Special Master asks SRP what exactly the benefit to the adjudication is to have the certificate.

Ms. Wilkinson states SRP's viewpoint is that the certificate will reduce to the biggest extent possible, the number of objections at the catalog and final report stage. The certificate is necessary to establish that post 1919 rights were obtained pursuant to the law and the certificate confirms ADWR's review that the facts stated in the application are accurate and that they are entitled to a right under the statute. She further referred to ADWR's comment that 98% of applications are not accurate.

Mr. Alder clarifies that he's only talking about stock ponds deemed to be *de minimis*, so it doesn't actually matter because it's going to be less than or equal to the approved *de minimis* amount. ADWR has never had a stock pond that has been more than what they've claimed when it's been a *de minimis*.

Mr. Pew argues that he represents a lot of stock pond holders, and that through this [adjudication] review process, if there's something that is inaccurate, objectors will make sure the inaccuracy is corrected.

Mr. Sparks states there's an overall benefit to knowing the actual quantity of water that a stock pond can hold for management purposes and prioritization. In the event that someone wants to sever and transfer a water right from a stock pond to some other location, the certificate must be accurate. Also, the court must be able to determine the exact amount of water in a stockpond in the event water users must be prioritized.

Mr. Pew argues there's no outlet for a stock pond to release water downstream, therefore the reality of a call to a stock pond owner would be an order to breach the pond. He further argues that's a lot of effort for water that's already been deemed that wouldn't make it downstream due to infiltration and evaporation. Special Master Thorson found that as a practical matter, it's unlikely that owners of stock ponds could be called out by senior users because it would be difficult or impossible to show that any of that water would reach a downstream user.

Mr. Pew also comments that with respect to avoiding objections down the road at the catalog phase, many potential objections to abstracts that have already been approved would have been waived. Therefore, he argues it is not worthwhile to go through a lot of effort to avoid objections that may not happen or may have been waived.

Further discussion is held regarding the waiver of objections to previously approved abstracts. Ms. Wilkinson states parties could have objected to previously approved abstracts regarding the certification issue because it speaks directly to the basis of right. The reason SRP did not previously object is because they did not realize until now that the basis of right number included in the abstract represented the application and not the certificate. For stock pond certifications, ADWR's numbering system does not distinguish between the two documents. Furthermore, for older abstracts, there was no way to confirm the status of the filing online; confirmation would have required going down to ADWR and requesting the records every time.

The Special Master states that the Thorson order regarding stockpond filings is permissive, not a requirement, and therefore is not a good argument.

The Special Master asks ADWR if it is possible to focus on stockpond applications in the San Pedro basin, specifically the 173 associated with previously approved abstracts? She asked if ADWR could do 3 a week, that would be 58 weeks. The 173 could be done by next December [2026].

Ms. Nielsen stated that was something ADWR could consider. She also pointed out that stock pond owners themselves are the cause of a lot of the delay. The Special Master stated the court can certainly assist by ordering claimants to cooperate.

Discussion was held about the Special Master requesting information from ADWR regarding a stockpond that is part of a current case, noting she is limited in how many cases can be initiated at a time.

Mr. Wilkins expressed concern that throughout the course of a case, with all the other parties coming in and objecting, there may be new amendments filed and refined and may result in going through the amendment/certification process more than once. ASL is particularly concerned with filings on behalf of ASLD and their lessees. Mr. Wilkins explained many details

are determined as part of the case which makes it difficult with amendments early in the process because it may need to be amended again later.

Ms. Nielsen points out that in ADWR's first filing for this issue they identified a number of uncertificated stock ponds per surface watershed. However, this list doesn't exactly conform to the HSR watersheds. She stated it is close for the San Pedro at 1,846 uncertificated for the entirety of the watershed.

Mr. Pew asks the Court if he may respond to a Reply brief submitted by the Cities¹. He stated no initial brief was submitted by the Cities so no other party was able to respond.

Mr. Sparks objects, stating this conference was not meant to be an advocacy discussion, just an open discussion with the court and ADWR.

Special Master Zendri agrees with Mr. Sparks and his objection is sustained.

Discussion is held regarding the already approved abstracts and how a new certificate would be added to the abstract. Ms. Nielsen states the stockpond filing number would not change. Someone would have to check the imaged documents or ADWR would need to file notice with the court.

The Special Master asks if ADWR has any intention of working on those certificates?

Ms. Nielsen states ADWR has not prioritized the 173 specifically, but certainly if they would show up in a basin sweep, then they would be completed. He further stated that any time an abstract is approved, it is noted in the surface water filing database should enforcement be necessary.

Discussion is held regarding the actual size of inspected stockponds. It is ASLD's position that for *de minimis* stockponds, the number doesn't really matter as long as it's less than the approved *de minimis* value.

There is further discussion on why ADWR does not have rules for their stockpond investigations. Both Ms. Nielsen and Mr. Sparks indicate a surface water rulemaking was attempted in the early 1990s but was unsuccessful.

Mr. Sparks further stated that there are challenges on the Colorado watershed as a result of uncertificated stockponds in the upper basin states it is difficult to accurately account for all water in the watershed. While none of the pond are large individually, there is a cumulative effect.

The Special Master reiterates that everyone is in agreement that approving an abstract for the catalog of proposed rights does not eliminate ADWRs requirement eventually certificate it. I think we're all in agreement on this.

Ms. Wilkinson states SPR asserted in their briefing that they see no reason there should be a delay in the adjudications if ADWR starts now, especially if the court will get the claimants involved.

¹ The "Cities" refers collectively to the cities of Avondale, Glendale, Mesa, Scottsdale, and Tempe.

Mr. Sparks agrees with Ms. Wilkinson and adds that they also suggested in their filings that the court could ask ADWR to provide information about a stock pond proceeding and order the claimants to review their filings or even meet with ADWR

Discussion is held regarding getting information from the claimants. ADWR has worked on a pilot program with the US Forest Service in the Kaibab National Forest. The Special Master asks if this is something ADWR and ASLD can work together on. Both agencies agree it can be.

The Special Master addresses all the parties regarding improvement of the process for stock ponds to be certificated with respect to other rivers. Discussion is held regarding the same.

The Court thanks the parties for their participation in today's hearing.

10:30 a.m. Matter concludes.

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