

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

March 25, 2025

CLERK OF THE COURT
S. Ortega
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

In Re: *A.E.R. Corporation*
Contested Case No. W1-11-1698

FILED: March 28, 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: Initial Status Conference

MINUTE ENTRY

Central Court Building – Courtroom 301

11:00 a.m. This is the time set for an Initial Status Conference before Special Water Master Sherri Zendri to determine if parties associated with the land are interested in pursuing potential water rights.

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

The following parties/counsel appear virtually and/or telephonically:

- Property owners Sherry Ortner, Amy Lloyd, and Kenneth Hansen
- Michael Foy for Salt River Project (SRP)
- Katya L. Norris observing for the Navajo Nation
- Karen Nielsen for the Arizona Department of Water Resources (ADWR)
- Merrill C. Godfrey for Gila River Indian Community
- Joe Sparks, Laurel A. Herrmann and Jan Sutton for San Carlos Apache Tribe
- Susan Montgomery for Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- Laurel Boyer and Maggie Woodward for U.S. Department of Justice

- Jay Brown on behalf of property owners Nathan Jacobsen and Heather Hart, Adam and Amanda Malboeuf, Douglas F. and Tina M. Hicks, Dane L. and Sherry K. Ortner, Cory and Jaime Richins, Nicholas Ganas, Angela D. and Jeffrey L. Johnson, Jack D. and Amy J. Lloyd, and Natalie Judd
- Brett Stavin observing for Tonto Apache Tribe
- Kaitlyn Smith for ASARCO

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

Mr. Brown informs the Court that he will be filing a notice of appearance on behalf of the specific property owners he represents listed above.

The Court updates the property owners as to the process that the State of Arizona uses to allocate and prioritize limited surface water.

Mr. Brown informs the Court that the nine landowners he represents share two wells with well-sharing agreements. One of the wells is located on the Hart's property (well no. 55-229245). The other well is located on the Judd property and is shared with landowners 9-13 of Attachment B to the Court's order of February 10, 2025 (well no. 55-230816). All of the well uses are domestic only. Mr. Brown understands there are two other shared wells that are for domestic use only, one on the Hansen property and one on the Chastain property. At this time, Mr. Brown requests approximately six months to update the filings and file a proposed abstract with ADWR.

IT IS ORDERED that within 45 days, but no later than **May 15, 2025**, ADWR shall put together a map showing where all the wells that have been registered with ADWR are located and circulate such map to all parties in this matter.

IT IS FURTHER ORDERED that no later than **April 30, 2025**, all property owners that have wells shall confirm with ADWR that their wells are registered.

IT IS FURTHER ORDERED that statements of claimants shall be updated and draft abstracts completed and filed by claimants no later than **September 22, 2025**. The parties will have until **October 2, 2025**, to comment and/or object to the draft abstract.

Discussion is held regarding the subdivision of the 13 parcels for this property. Mr. Sparks believes it would be helpful to the Court and the parties involved to know whether there was a lawful subdivision of the property under State law in determining if there is adequate water supply.

LET THE RECORD REFLECT that Mr. Sparks may move the Court to order the claimants to produce such proof of a lawful subdivision of the property if at a later time Mr. Sparks can prove that it is a requirement. The Court has not seen thus far any case law or statute that requires that a water right is dependent upon an appropriate subdivision.

Further discussion is held regarding *de minimis* household, domestic water rights and the source of water for subdivided parcels.

LET THE RECORD FURTHER REFLECT that the Court takes note of Mr. Sparks' concerns, and the Court will hear further argument and objections at the appropriate time.

IT IS FURTHER ORDERED setting another status conference on **October 2, 2025, at 10:00 a.m.** in this division. The status conference will be held using the Court Connect program. Instructions for Court Connect are attached as Attachment A. If you receive this Order by email, click on the red box "Join Court Connect Hearing" on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect.

Ms. Woodward requests a courtesy email list for this case.

Mr. Hanson requests more information about what steps he needs to take in this matter. The Court informs Mr. Hanson that he needs to register his well if it has not already been registered.

Ms. Lloyd comments on Ms. Woodward's request. Ms. Lloyd states that she is the well manager for the well located on the Judd property, she manages the five properties that come off of that well, and she has provided Mr. Brown with email addresses for each of her residents. Ms. Lloyd also confirms that the well is registered.

11:38 a.m. Matter concludes.

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)

A SOC is a landowner’s or lessee’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 must also provide a “basis of right.” To begin this process, the claimant must file a document with ADWR either registering a water right, applying for a permit to appropriate water, or applying for a stockpond claim of

right. See Arizona Revised Statutes (“Ariz. Rev. Stat.”) §§ 45-182(A), 45-152(A), 45-273.

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” or an “application for a stockpond claim of right.” Ariz. Rev. Stat. §§ 45-152(A), 45-272(C).

If the claimed water right is for a pond constructed before 1977, less than 15 acre-feet, and used solely for watering livestock or wildlife (but not primarily for fishing or culturing of fish), the claimant should file an “application for a stockpond claim of right.” Ariz. Rev. Stat. §§ 45-271, 45-272. If the claimed water right is for any other use, the claimant must file an “application for a permit to appropriate public water.” Blank forms for either application may be found on the ADWR website at:

<https://www.azwater.gov/surface-water/surface-water-forms-and-documents>.

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/W1-11-1698-Objections.pdf>

4) Contact Information

To contact ADWR:

- 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.

Attachment A



Court Connect Hearing Notice for In re A.E.R. Corporation

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re A.E.R. Corporation,

Contested Case No. W1-11-1698

Start Date/Time: October 2, 2025, at 10:00 a.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)