

SUPERIOR COURT OF ARIZONA
MARICIPA COUNTY

January 7, 2025

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

S. Ortega
Deputy

In Re: Lester and W. Ruth Hagan, et al.

Case No. W1-11-1902

FILED: January 10, 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 Conference

MINUTE ENTRY

Courtroom: CCB 301

10:31 a.m. This is the time set for an initial conference.

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

- Michael Gray, Current Landowner
- Kaitlyn Smith for ASARCO
- Mark McGinnis observing for SRP
- Merrill C. Godfrey for the Gila River Indian Community
- Laurel A. Herrmann for the San Carlos Apache Tribe
- Alexandra Corcoran observing for Susan Montgomery on behalf of Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- David Gehlert for the Natural Resources Agency for the United States
- Karen Nielsen for the Arizona Department of Water Resources (ADWR)
- John Burnside for BHP Copper
- Garrett Perkins observing for the St. David Irrigation District
- Denise Riden for Cochise County
- Candace D. French for the Navajo Nation
- Amanda Eubanks for the Department of Justice Indian Resources Section

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

Mr. Gray informs the Court, and the Court notes Mr. Gray's correct street address as 879 E. McNeil instead of 789 E. McNeil.

The Court states that a statement of claimant has never been filed in this matter. Mr. Gray confirms that he is interested in pursuing potential water rights on his property and is also interested in filing a statement of claimant.

The Court will include links in this minute entry for information on where to find the statement of claimant and basis of right forms. The Court does not carry these forms. The Court strongly suggests that Mr. Gray reach out to ADWR. Mr. Gray should meet with ADWR to answer general questions and receive general information with respect to the forms that need to be filed.

Discussion is held regarding the water rights and objections filed in this matter.

IT IS ORDERED that Mr. Gray shall meet with ADWR no later than **March 6, 2025**.

IT IS FURTHER ORDERED that Mr. Gray shall submit a written status report to the Court no later than **April 7, 2025**, regarding how he would like to proceed, including a proposed schedule for resolving any remaining issues or objections regarding potential water rights on his property.

The Court will set another status conference upon receipt of the status report.

The Court will also include a link in this minute entry to the various objections to the particular use of the water claim. The Court explains the process of resolving objections.

Mr. Gray's email address will be added to the court mailing list as follows:
mgray@phgaz.com.

There are no concerns or questions from any of the objectors at this time.

10:51 a.m. Hearing concludes.

LATER:

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 the 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).

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/W1-11-1902-Objections.pdf>

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.. 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." A basis of right is a document filed 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>.

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 ADWR regarding application forms and processing procedures please call 1-866-246-1414, email smitchell@azwater.gov, or visit <https://www.azwater.gov/adjudications>.

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

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