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5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
6 **IN AND FOR THE COUNTY OF MARICOPA**  
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9 IN RE THE GENERAL ADJUDICATION  
10 OF ALL RIGHTS TO USE WATER IN  
11 THE GILA RIVER SYSTEM AND  
12 SOURCE

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

Case Nos. W1-11-2081, W1-11-2089, W1-  
11-2090, W1-11-2111, W1-11-2119, W1-  
11-2128; W1-11-2708; W1-11-2697

13 **ORDER ON MOTIONS FOR**  
14 **SUMMARY JUDGEMENT**

15 CONTESTED CASE NAMES: *In re Orie Alvin Owens, Sr., et al.* (W1-11-2081); *In re*  
16 *Valley National Bank* (W1-11-2089); *In re William & Esther Taylor* (W1-11-2090); *In re*  
17 *Ruth B. Singer* (W1-11-2111); *In re San Pedro Investments* (W1-11-2119); *In re Robin L.*  
18 *and Linda M. Richey* (W1-11-2128); *In re Norman G. and Barbara Y. Crawford* (W1-11-  
2708); *In re Hope Iselin Jones* (W1-11-2697)

18 HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report

19 SUMMARY: This order addresses all dispositive motions and sets a pre-trial conference  
20 for **Wednesday, May 21, 2025, at 9:00am.**

21 NUMBER OF PAGES: 55 (44 + Attachments)  
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23 **INTRODUCTION**

24 *In re St. David Irrigation District* (W1-11-1675) is a consolidated proceeding  
25 addressing claims for potential water rights located within the exterior boundaries of the St.  
26 David Irrigation District (“the District or SDID”). On January 23, 1995, 112 contested cases  
27 with property located within the boundaries of the District were consolidated into contested  
28 case W1-11-1675, including six contested cases referred to as the “Initial Designation

Cases”<sup>1</sup>. This Court divided the consolidated *St. David* case into phases, with Phase I addressing three issues identified by the Special Master as having broad, case wide impact.<sup>2</sup>

- 1) The correct methodology to determine the amount of water used for irrigation and the quantities used for irrigation;
- 2) Whether water rights with a priority of date prior to 1919 are subject to forfeiture; and
- 3) The identification of the points of diversion.

Phase II involves resolution of claims in the individual cases. On July 21, 2022, the six “Initial Designation Cases” were deconsolidated from W1-11-1675, so that they could move forward separately.<sup>3</sup> Through the litigation of these initial six cases, a number of important issues pertaining to the adjudication of irrigation uses will be determined. The Initial Designation Cases are being litigated by the District on behalf of the current landowners.<sup>4</sup> On July 21, 2022, the following cases were identified as the Initial Designation Cases.

W1-11-2081 - *In re Orie Alvin Owens, Sr. et al.*

W1-11-2089 - *In re Valley National Bank*

W1-11-2090 - *In re William and Esther Taylor*

W1-11-2111 - *In re Ruth B. Singer*

W1-11-2119 - *In re San Pedro Investments*

W1-11-2128 - *In re Robin L. and Linda M. Richey*

In February 2023, the following two contested cases were separately scheduled for litigation of their claims.

W1-11-2697 - *In re Hope Iselin Jones*

W1-11-2708 - *In re Norman G. and Barbara Y. Crawford*

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<sup>1</sup> W1-11-1675 *et al.*, Case Initiation and Consolidation (January 23, 1995).

<sup>2</sup> W1-11-1675 *et al.*, Minute Entry at 3 (August 21, 2019).

<sup>3</sup> W1-11-1675 *et al.*, Case Management Order (July 21, 2022).

<sup>4</sup> W1-11-1675 *et al.*, Case Management Order (July 21, 2022).

1 On June 11, 2024, a joint motion was filed by all the parties requesting the Court  
2 modify the case management orders for all the cases.<sup>5</sup> Because similar issues pervade all  
3 eight cases, the Court has considered the cases concurrently since that date. Since these  
4 cases were first initiated, some as long ago as 1994, there have been multiple property  
5 transfers. When this order refers to claimants in all eight of the contested cases as a group,  
6 the Court uses the term “Claimants.” A summary of current landownership and water rights  
7 claims are included as Appendix A.

8 In late February 2025, parties in all cases submitted motions for summary judgment  
9 concerning threshold issues.<sup>6</sup> The Motions raise issues including the evidence needed to  
10 document the initiation of an appropriation and the extent and location of a perfected  
11 appropriation; the evidentiary showing necessary for forfeiture or abandonment; the  
12 interpretation of “quantification” stipulations entered in the *St. David* cases; the application  
13 of the no-injury rule; and the applicability of summary adjudication procedures.

14 In this Order, the Court addresses all motions for summary judgment filed in  
15 February 2025. The first section of the Order discusses issues raised by the Motions that  
16 pertain to irrigation claims. The second section discusses issues related to *de minimis* claims,  
17 i.e. domestic and stockwatering claims.

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20 <sup>5</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Unopposed Joint Motion to Modify Case  
21 Management Orders (June 11, 2024).

22 <sup>6</sup> W1-11-2697, *United States Amended Motion for Partial Summary Judgment* (Feb. 27, 2025); W1-  
23 11-2697, *San Carlos Apache Tribe’s Motion for Partial Summary Judgment* (Feb. 21, 2025); W1-  
24 11-2708, *United States Amended Motion for Partial Summary Judgment* (Feb. 27, 2025); W1-11-  
25 2708, *Gila River Indian Community’s Motion for Summary Judgment* (Feb. 21, 2025); W1-11-2708,  
26 *Hartman Farms LLC’s Motion for Partial Summary Judgment on Priority* (Feb. 21, 2025); W1-11-  
27 2708, *San Carlos Apache Tribe’s Motion for Partial Summary Judgment* (Feb. 21, 2025); W1-11-  
28 2081 *et al.*, *United States Amended Motion for Partial Summary Judgment* (Feb. 27, 2025); W1-  
11-2081 *et al.*, *St. David Irrigation District’s Motion for Partial Summary Judgment on Priority*  
(Feb. 21, 2025); W1-11-2081 *et al.*, *Gila River Indian Community’s Motion for Summary Judgment*  
(Feb. 21, 2025); W1-11-2081 *et al.*, *San Carlos Apache Tribe’s Motion for Partial Summary*  
*Judgment* (Feb. 21, 2025); *Claimants’ Motion for Partial Summary Judgment on Irrigation Water*  
*Duties* (Feb. 21, 2025); *Claimants’ Motion for Partial Summary Judgment on Forfeiture and*  
*Abandonment* (Feb. 21, 2025).

## **STANDARD OF REVIEW**

The Court may grant a motion for summary judgment “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a). The Court must view “the evidence and reasonable inferences in the light most favorable to the party opposing the motion.” *Orme School v. Reeves*, 166 Ariz. 301, 309-10 (1990). “Summary judgment is not appropriate when a trial judge must pass on the credibility of witnesses with differing versions of material facts, weigh the quality of documentary or other evidence, or choose among competing or conflicting inferences. *Jennifer G. v. Arizona Dept. of Economic Security*, 211 Ariz. 450, 454 (citing *Orme Sch. v. Reeves*, 166 Ariz. 301, 311, 802 P.2d 1000, 1010 (1990)).

Ultimately, where the movant seeks to refute a claim or affirmative defense, the movant must show that the “the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Brookover v. Roberts Enterprises, Inc.*, 215 Ariz. 52 (Ct. App. 2007). Where the movant seeks to prove a claim or affirmative defense, the movant must show that the “undisputed admissible evidence that would compel any reasonable [fact finder] to find in its favor on every element of its claim.” *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209 (Ct. App. 2012).

## **GOVERNING LAW**

Under the doctrine of prior appropriation in Arizona, an owner or possessor of land may establish rights to appropriable water through the application of that water to beneficial use. *In re Determination of Relative Rts., to Use of Waters of Pantano Creek in Pima Cnty.*, 45 Ariz. 156, 171 (1935). Prior to the enactment of the Arizona Water Code in 1919, water users could establish a water right by “an intent to take,” “an open, physical demonstration of the intent,” and an application of “the water to the use designed.” *Phelps v. Dodge*, 211 Ariz. 146, 149 ¶ 13 (Ct. App. 2005) (citing *Clough v. Wing*, 2 Ariz. 371, 382–383 (1888)). Subsequently, the Water Code imposed a requirement that water users must obtain a “permit

1 to appropriate water” before “construction of the works necessary for the appropriation.”  
2 *Parker v. McIntyre*, 47 Ariz. 484, 490 (1936); Ariz. Rev. Stat. §§ 45-152, 45-153.

3 Broadly, the beneficial use, quantity, and priority date define an appropriative right.  
4 The quantity of use is the amount of water necessary for the beneficial use. Ariz. Rev. Stat.  
5 § 45-141 (“Beneficial use shall be the basis, measure, and limit to the use of water.”). Before  
6 enactment of the Water Code, the priority date of a water right could relate back to “the  
7 initiation of the appropriation” if the water user “exercise[d] reasonable diligence in every  
8 step required to make his appropriation complete.” *Maricopa Cnty. Mun. Water*  
9 *Conservation Dist. No. 1. v. Southwest Cotton Co.*, 39 Ariz. 65, 102–103 (1935). If the water  
10 user “fail[ed] to use reasonable diligence, his rights commence[d] only as of the time of the  
11 actual application of water.” *Id.* The relation back doctrine and its emphasis on reasonable  
12 diligence persist in the Water Code, which assigns priority dates to water rights according  
13 to the date of the application if the construction of diversion works is “prosecuted with  
14 reasonable diligence and completed within a reasonable time.” Ariz. Rev. Stat. § 45-160.

15 Beneficial use is the North Star of the prior appropriation doctrine; accordingly, the  
16 doctrine penalizes non-use. Abandonment, originating out of common law, requires an  
17 intent to abandon the right, coupled with a period of non-use. *Phelps Dodge*, 211 Ariz. 146,  
18 151 (Ct. App. 2005). By contrast, the forfeiture provision of the Water Code provides that  
19 failure to use water for five successive years will cause the water to “revert to the public”  
20 unless a statutory exception applies. Ariz. Rev. Stat. §§ 45-141(C), 45-189.

21 The last principle relevant to these cases is the “no-injury rule.” Specifically, the rule  
22 ensures that appropriators “have vested rights in the continuation of stream conditions as  
23 they existed at the time of their respective appropriations.” *Farmers Highline Canal &*  
24 *Reservoir Co. v. City of Golden*, 129 Colo. 575, 272 P.2d 629 (1954). Accordingly, in  
25 Arizona, an appropriator “has the burden of establishing that a change in his diversion or in  
26 his use of water has not negatively affected the rights of other appropriators.” *Zannaras v.*  
27 *Bagdad Copper Corp.*, 260 F.2d 575, 577 (9<sup>th</sup> Cir. 1958).

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2 **1.0 IRRIGATION CLAIMS**

3 **1.1 EVALUATING ST. DAVID IRRIGATION DISTRICT’S CLAIMS ON ITS**  
4 **OWN BEHALF.**

5 The San Carlos Apache Tribe (“San Carlos”) claims in their motion on the Initial  
6 Designation Cases that the District is inappropriately asserting water claims on its own  
7 behalf.<sup>7</sup> Arizona case law here is clear that an irrigation district cannot hold water rights.  
8 *See Slosser v. Salt River Valley Canal Co.*, 7 Ariz. 376 (1901). However, a review of the District’s  
9 proposed water rights did not corroborate the Tribe’s assertion. Furthermore, the District,  
10 in their Response to the Tribe’s motion, and during the April 17, 2025, oral proceedings  
11 assured the parties that none of the Initial Designation Cases involve potential water rights  
12 asserted on behalf of the District.<sup>8</sup>

13 The Tribe did not address the District’s assertions in their April 11, 2025, Reply,  
14 however the Tribe’s counsel indicated verbally during the April 17, 2025, oral proceedings  
15 that this particular argument by the Tribe has been withdrawn.<sup>9</sup>

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17 **1.2 DETERMINING QUANTITY AND PRIORITY DATE.**

18 In order for the Court to recognize an appropriative right, the claimant must establish  
19 certain facts concerning the right. These facts include, but are not limited to, the extent of  
20 the beneficial use, e.g. quantity of irrigated acreage; the quantity of water necessary for the  
21 beneficial use; the particular lands to which the water was applied; the date of the initiation  
22 of the beneficial use, to the extent that the claimant seeks application of the relation-back  
23 doctrine; and the date of the perfection of the beneficial use. *Gillespie Land & Irr. Co. v.*

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25 <sup>7</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe’s Motion for Partial Summary Judgment at 9-10 (Feb.  
26 21, 2025).

27 <sup>8</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants’ Consolidated Response to San Carlos  
28 Apache Tribe’s Motion for Partial Summary Judgment at 12 (March 21, 2025), W1-11-2697, W1-  
11-2708, W1-11-2081 *et al.* Minute Entry at 8 (May 1, 2025).

<sup>9</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Minute Entry at 8 (May 1, 2025).

1 *Buckeye Irr. Co.*, 75 Ariz. 377, 384 (1953) (stating that a claimant must “first prove that it  
2 had made an appropriation of unappropriated waters, and then . . . the amount or quantity  
3 of water beneficially used and the specific lands upon which the waters were used”).

4 With respect to the Initial Designation Cases, the District seeks to establish these key  
5 facts using the following historical documents: homestead proofs submitted by prior  
6 landowners between the 1890s and early 1900s; a 1916 map depicting agricultural lands  
7 within the District; a 1923 State Water Commission map labeling some of the parcels at  
8 issue as “cultivated,” “previously cultivated,” and “never cultivated;” a 1939 map of the  
9 District depicting “land irrigated with water from the San Pedro River;” and a 1942 affidavit  
10 signed by certain District landowners attesting that, since 1900, “water from the San Pedro  
11 River[] has been continuously used for irrigation purposes” on lands encompassing the  
12 properties at issue in the initial designated cases.<sup>10</sup>

13 For the *Jones* case, current property owner C-Spear provides multiple homestead  
14 patents, an 1899 United States Geological Survey (“USGS”) report and 1915 Department  
15 of the Interior (“DOI”) survey describing canal locations generally in the area, and a 1921  
16 State Water Commissioner map depicting irrigated lands.<sup>11</sup> Property owner Hartman Farms  
17 puts forth evidence in the *Crawford* case that includes homestead documents filed between  
18 the late 1870s and early 1890s, an 1879 US General Land Office map delineating cultivated  
19 lands, and the 1921 State Water Commissioner map.<sup>12</sup>

20 Further, in the Initial Designation Cases, the District and objectors stipulated to  
21 certain “water duties” in order to simplify the quantification of claimed water rights.  
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23 <sup>10</sup> W1-11-2081 *et al.*, St. David Irrigation District’s Motion for Partial Summary Judgment on  
24 Priority (Feb. 21, 2025); W1-11-2081 *et al.*, St. David Irrigation District’s Statement of Facts in  
Support of Motion for Summary Judgment on Priority at 7–9 ¶¶ 32–38, 40–41 (Feb. 21, 2025).

25 <sup>11</sup> W1-11-2697, C-Spear’s Motion for Partial Summary Judgment on Priority (Feb. 21, 2025); W1-  
26 11-2081 *et al.*, St. David Irrigation District’s Statement of Facts in Support of Motion for Summary  
Judgment on Priority at 7–9 ¶¶ 32–38, 40–41 (Feb. 21, 2025).

27 <sup>12</sup> W1-11-2708, Hartman Farms, LLC. Motion for Partial Summary Judgment on Priority (Feb. 21,  
28 2025); W1-11-2708, Hartman Farms, LLC. Statement of Facts in Support of Motion for Summary  
Judgment on Priority at 7–9 ¶¶ 32–38, 40–41 (Feb. 21, 2025).

## 1.2.1 APPLICABILITY OF WATER DUTY STIPULATIONS

### 1.2.1.1 Background

As described above, a key objective for the first phase of the *In re St. David* group of contested cases was to determine a “methodology to determine the amount of water used for irrigation and the quantities used for irrigation.”<sup>13</sup> Subsequently, the District and objectors to claims within the District entered into the Stipulation Regarding Quantification of Water Rights for Irrigation Uses (“Methodology Stipulation”) in July 10, 2020.<sup>14</sup>

The Methodology Stipulation established, for use in the *St. David* cases, a method to quantify claimed rights using an “irrigation water duty.” The irrigation water duty represents “the amount of water in acre-feet per acre of irrigated land (“AF/ac”) that the holder of a water right is legally entitled to divert or withdraw (or have diverted or withdrawn on its behalf) for irrigation uses on its lands.”<sup>15</sup> Parties to the *St. David* cases then entered into the Stipulation Regarding Irrigation Water Duty (“Duty Stipulation”), which set forth an irrigation water duty of 9 acre-feet per acre (“AC/ac”) for lands in the District.<sup>16</sup>

In its Motion for Partial Summary Judgment on Irrigation Water Duties, the District asserts that, according to the Methodology and Water Duty Stipulations, appropriative rights in *Jones*, *Crawford*, and the Initial Designation Cases must be quantified according to specific water duties.<sup>17</sup> The District argues that, for all cases in the San Pedro River

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<sup>13</sup> W1-11-1675, Minute Entry at 3 (Aug. 21, 2019).

<sup>14</sup> The parties who signed the Methodology Stipulation included On July 10, 2020 the District, Salt River Project, United States, San Carlos Apache Tribe, Gila River Indian Community, Yavapai-Apache Nation, Tonto Apache Tribe, Arizona Chapter of the Nature Conservancy, Arizona State Land Department, City of Cottonwood, Franklin Irrigation District, Gila Valley Irrigation District, City of Mesa, City of Phoenix, Freeport Minerals Corporation, BHP Copper Inc., and ASARCO LLC.

<sup>15</sup> W1-11-1675, Stipulation Regarding Quantification of Water Rights for Irrigations Uses (“Methodology Stipulation”) at 4 (July 10, 2020).

<sup>16</sup> W1-11-2081 et al., Duty Stipulation at 3 ¶ 8 (Sep. 10, 2020). Parties to the Duty Stipulation included the District, SRP, the US, San Carlos, GRIC, Yavapai-Apache Nation, Tonto Apache Tribe, ASARCO, BHP Copper, the City of Phoenix, and the City of Mesa.

<sup>17</sup> The District asserts that the applicable water duties are 5.6 AF/ac in the Initial Designation Cases, 7.12 AF/ac in the *Jones* case, and 7.2 AF/ac in the *Crawford* case. Duty MSJ at 7-8.



1 Watershed, the Methodology Stipulation establishes an exclusive method for quantifying  
2 water rights based solely on the application of current irrigation water duties to historical  
3 irrigation acreage. The District then asserts that the 9.0 AF/acre water duty described in the  
4 Water Duty Stipulation applies to the Initial Designation cases, although it now claims only  
5 5.6 AF/acre. Water Duty Motion at 6-7. The District further posits that the undisputed water  
6 duties reported by the United States' expert Dr. Tom Ley apply to the *Jones* and *Crawford*  
7 cases. Water Duty Motion at 6-7.

8 The United States ("U.S."), the Gila River Indian Community ("GRIC"), and San  
9 Carlos object to the use of the District's proposed water duties. First, because "historic  
10 beneficial use" is the basis of an appropriative right, they argue that the proposed water  
11 duties, which are based on current conditions, are irrelevant.<sup>18</sup> The U.S., GRIC, and San  
12 Carlos further argue that Claimants' water duties represent, if anything, unlawful  
13 enlargements of historical diversions.<sup>19</sup> Second, GRIC and San Carlos contend that, as a  
14 procedural matter, neither Stipulation establishes a conclusive methodology for quantifying  
15 rights in any of the cases.<sup>20</sup>

#### 16 ***Breadth of Methodology Stipulation***

17 Through the Methodology Stipulation, various objectors in the *St. David* contested  
18 cases agreed to a precise, multi-step method for determining the quantity of water that  
19 claimants in those cases are "legally entitled to divert or withdraw (or have diverted or  
20 withdrawn on its behalf) for irrigation uses on its lands."<sup>21</sup> First, a "Net Irrigation

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21 <sup>18</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, US Response to Claimants Motion for Partial  
22 Summary Judgment on Stipulated Water Duties at 3-4 (March 24, 2025); W1-11-2697, W1-11-  
23 2708, W1-11-2081 *et al.*, San Carlos Apache Nation and Gila River Indian Community Joint  
24 Response to Claimant's Motion for Partial Summary Judgment on Stipulated Water Duties at 2  
(March 24, 2025).

25 <sup>19</sup> *Id.* at 4.

26 <sup>20</sup> During the oral argument held on April 17, 2025, the US, GRIC, and the Tribe all declared the  
intention of the July 2020 or September 2020 stipulation was never to be applied to claimed acreage  
as a way of estimating water usage.

27 <sup>21</sup> Methodology Stipulation at 4 paragraph 18. A thorough review of the contested cases that were  
28 consolidated with W1-11-1675 at the time both the water stipulations were negotiated and signed,

Requirement” is calculated by subtracting “Effective Precipitation” from “Crop Evapotranspiration.”<sup>22</sup> Crop evapotranspiration, also known as “crop water requirements,” is determined using the “Penman-Monteith Equation.”<sup>23</sup> To obtain the water duty, the Methodology Stipulation states that the net irrigation requirement is divided by the product of “On-Farm Efficiency” and “Conveyance Efficiency” figures.<sup>24</sup> Paragraph 28 of the Methodology Stipulation contains the single reference to other cases in the San Pedro River Watershed. With respect to other cases, parties agreed in Paragraph 28 that they would not dispute the use of the Penman-Monteith Equation in order to quantify “crop water requirements.”<sup>25</sup>

It is clear that, while the Methodology Stipulation establishes a conclusive procedure for quantifying appropriative rights in the *St. David* cases, the Stipulation has limited impact on any other case in the San Pedro River Watershed. The determination of crop water requirements is just one piece of the stipulated methodology. The agreement in Paragraph 28 requires the signing parties to accept the use of the Penman-Monteith equation to calculate crop water requirements only to the extent that crop water requirements are at issue in a contested case. As a result, while Claimants’ deferral to water duties calculated by the United States’ expert in *Jones* and *Crawford* is laudable, the Methodology Stipulation does not impose the irrigation water duty procedure to the *Jones* or *Crawford* cases.

### ***Effect of Water Duty Stipulation***

As established above, the plain language of the Methodology Stipulation establishes that appropriative rights in the *St. David* cases shall be quantified by applying a water duty to historical irrigation acreage. The Water Duty Stipulation implements the Methodology

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does not include either the *Jones* or *Crawford* case. Furthermore, neither the *Jones* or *Crawford* case has been subsequently consolidated with the *St. David* Irrigation District cases.

<sup>22</sup> Methodology Stipulation at 30 paragraph 6

<sup>23</sup> Methodology Stipulation at 5-6 paragraphs 24-25, 28. Inputs to the Penman-Monteith Equation include weather and climate data and the mix of crops on the property at issue. 26, 35-37.

<sup>24</sup> Methodology Stipulation at 10 paragraphs 47-49

<sup>25</sup> Methodology Stipulation at 6 paragraph 28.

1 Stipulation, supplying an "Irrigation Water Duty in this contested case [of] 9 AF/ac."<sup>26</sup> The  
2 Stipulation later declares that the stated duty "resolves all aspects of the Irrigation  
3 Quantification Issue for purposes of this contested case."<sup>27</sup> At the oral arguments held on  
4 April 17, 2025, a brief survey of parties other than the U.S., GRIC, and the San Carlos  
5 indicated a collective understanding that the water duties would be used to conclusively  
6 quantify for the *St. David* cases.<sup>28</sup>

7 It is indisputable that all parties to the Initial Designation Cases stipulated to a  
8 quantity for each claim equal to the product of a 9.0 AF/ac water duty and historical irrigated  
9 acreage. Although Objectors argue that the Stipulations impose simplifying assumptions on  
10 the quantification inquiry, that is precisely the point. The courts favor stipulations because  
11 they reduce the time of trial and narrow the issues.<sup>29</sup> Absent "inadvertence, excusable  
12 neglect, fraud, mistake, or other narrowly defined circumstances, the court must uphold a  
13 stipulation."<sup>30</sup>

14 Arguments from GRIC during oral argument that the stipulations regarding the water  
15 duties were not disclosed as a basis for the claims in the *Jones* and *Crawford* cases and  
16 should be excluded will be addressed in the Court's response to GRIC's written Motion *In*  
17 *Limine* filed April 28, 2025.

18  
19 **IT IS ORDERED** granting in part and denying in part *Claimants' Motion for*  
20 *Summary Judgment on Water Duties*. The irrigation water duty to be used to determine the  
21 quantity attributes of the irrigation rights in the *St. David* cases is 9.0 AF/ac.

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23 <sup>26</sup> W1-11-1675, Water Duty Stipulation at 6 ¶ 8.

24 <sup>27</sup> Water Duty Stipulation at 3 ¶ 11.

25 <sup>28</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Minute Entry at 14-15 (May 1, 2025).

26 <sup>29</sup> *State v. Sorrell* at 173, *Pulliam v. Pulliam* at 345.

27 <sup>30</sup> See *Harsh Building Company v. Bialac* at 593, *Rutledge v. Arizona Bd. of Regents*, at 550. Claimants  
28 have also not presented any reason why the Court should unilaterally alter the stipulations by reducing  
the water duty from 9.0 AF/ac to 5.6 AF/ac. Further, Claimants appear to have stepped away from the  
unilateral change by stating during the oral arguments, stating that "[i]f the [other parties] do not  
agree, then the Court should use 9 acre-feet." Minute Entry at 13 (May 1, 2025).

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2 **1.2.2 DETERMINING EXTENT AND LOCATION OF IRRIGATION.**

3 In the Initial Designation Cases and *In re Norman G. and Barbara Y. Crawford*,  
4 objectors filed motions for summary judgment asserting that the Claimants in these cases  
5 cannot meet their burden to prove essential details of purported historical irrigation uses  
6 underlying their claims.<sup>31</sup> Each claimant filed a cross-motion or response asserting that the  
7 evidence disclosed is indeed sufficient to meet its burden.<sup>32</sup>

8 The case most relevant to the inquiry presented by the motions is *Gillespie Land and*  
9 *Irrigation Company v. Buckeye Irrigation Company*. 75 Ariz. 377 (1953). In that case,  
10 Gillespie Land and Irrigation Company claimed rights to the Gila River and its tributaries.<sup>33</sup>  
11 Gillespie proved that, by 1929, it had irrigated 21,000 acres within the 82,000 acres of land  
12 that it owned.<sup>34</sup> Nonetheless, the Supreme Court of Arizona held that, because of the  
13 absence of “any evidence to disclose what particular 21,000 acres were irrigated,” the trial  
14 court had properly dismissed Gillespie’s claims.<sup>35</sup> Therefore, in this case, the Court must  
15 determine whether claimants, using disclosed evidence, can demonstrate the extent and  
16 location of irrigation on their properties. Appendix B includes maps developed by the  
17 Court, for illustrative purposes only, to help visualize the properties in review.  
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20 <sup>31</sup> W1-11-2708, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-  
21 2708, San Carlos Apache Tribe’s Motion for Partial Summary Judgment (Feb. 21, 2025); W1-11-  
22 2081 *et al*, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2081 *et*  
23 *al*, San Carlos Apache Tribe’s Motion for Partial Summary Judgment (Feb. 21, 2025); W1-11-2697,  
U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2697, San Carlos  
Apache Tribe’s Motion for Partial Summary Judgment (Feb. 21, 2025).

24 <sup>32</sup> W1-11-2697, C-Spear, LLC’s Response to the United States’ Amended Motion for Partial  
Summary Judgment (“C-Spear Response”) (Mar. 21, 2025); W1-11-2708, Hartman Farms LLC’s  
25 Motion for Partial Summary Judgment on Priority (“Hartman Motion”) (Feb. 21, 2025); W1-11-  
26 2081 *et al.*, St. David Irrigation District’s Motion for Partial Summary Judgment on Priority (“St.  
David Motion”) (Feb. 21, 2025).

27 <sup>33</sup> *Gillespie* 75 Ariz. 377, 378 (1953).

28 <sup>34</sup> *Id.* at 380.

<sup>35</sup> *Id.*

1  
2 **1.2.2.1 St. David Irrigation District Initial Designation Cases**

3 To support its claims, the District disclosed homestead proofs, a 1916 map published  
4 by the Army Corps of Engineers, a 1923 State Water Commission map, a 1939 map of the  
5 District depicting irrigated land, and a 1942 affidavit signed by members of the District.  
6 While the 1942 affidavit, 1939 map, 1916 map, and homestead proofs fail to raise genuine  
7 issues of material fact in any case, the 1923 map raises a genuine issue of material fact in  
8 W1-11-2089. The Court discusses each line of evidence in turn.

9 ***Homestead Proofs***

10 The evidence most pertinent to the District’s asserted March 1, 1880 priority date is  
11 a series of “homestead proofs” describing tracts of land encompassing the claimants’ current  
12 parcels.<sup>36</sup> These sworn affidavits detail “improvements” made to federal land opened up to  
13 settlement under the Homestead Act. In particular, the documents record activities such as  
14 homebuilding and cultivation on parcels of land between 40 and 160 acres. For instance, in  
15 1895, Charles Smith testified that he cultivated “about 5 acres” in the southwest quarter of  
16 the northeast quarter of Section 5 Township 18 South, Range 21 East.<sup>37</sup> Subsequently, Smith  
17 increased the acreage cultivated to “about 12 acres” between 1896 and 1901.<sup>38</sup> The other  
18 homestead proofs cited by the District largely follow the same form.

19 Even assuming that the statements within the homestead proofs are true, they  
20 document only the extent of historical irrigation within forty to 160-acre tracts. The  
21 documents do not locate places of irrigation within those tracts, let alone within the SDID  
22 claimants’ one to twenty-acre parcels. As a result, the homestead documents cannot prove  
23 the extent of historical irrigation that occurred within the SDID claimants’ lands.

24  
25 \_\_\_\_\_  
26 <sup>36</sup> W1-11-2081 *et al.*, SDID’s Statement of Facts in Support of Motion for Partial Summary  
Judgment on Priority Exhibits O, P, Q, R (Feb. 21, 2025).

27 <sup>37</sup> W1-11-2081 *et al.*, SDID’s Statement of Facts in Support of Motion for Partial Summary  
Judgment on Priority Exhibit O (Feb. 21, 2025).

28 <sup>38</sup> *Id.*

1 ***1923 Map***

2 The claimant's most conclusive evidence as to the extent and location of irrigation  
3 prior to 1919 is the 1923 Arizona State Water Commission map.<sup>39</sup> The 1923 map labels  
4 certain then-existing parcels and notes whether each parcel was being cultivated, had  
5 previously been cultivated, or had never been cultivated.<sup>40</sup> The map also notes the acreage  
6 of irrigation that was occurring or that had previously occurred on each labeled parcel.<sup>41</sup>

7 With respect to five of the six Initial Designated Cases, the 1923 map has the same  
8 deficiencies as the homestead proofs. Even taking the descriptions on the map to be true,  
9 the map describes the irrigation that occurred in larger swaths of land encompassing the  
10 parcels at issue. Further, the 1923 map does not describe any land intersecting the parcels  
11 at issue in W1-11-2081 and W1-11-2119.

12 Nonetheless, the 1923 map may provide valuable information regarding the land at  
13 issue in W1-11-2089. Specifically, the boundaries of the land at issue in W1-11-2089  
14 encompass smaller parcels identified in the 1923 map as "cultivated." Therefore, in W1-11-  
15 2089, the 1923 map raises a genuine issue of material fact as to proof of historical use.

16 ***1939 Map and 1942 Affidavit***

17 The 1939 "Map of Irrigated Lands from the San Pedro River" depicts the parcels  
18 within the District existing in 1939 and notes "acreage."<sup>42</sup> The 1942 affidavit catalogs  
19 members of the District on whose land water "from the San Pedro River . . . has been  
20 continuously used for irrigation purposes" since 1900.<sup>43</sup> Both documents provide figures  
21 for "acreage," but the parties dispute whether the acreage figures represent the total area of  
22 land being irrigated or the total area of land owned by an individual.<sup>44</sup>

23 The 1939 map and 1942 affidavit, even if assumed to describe the acreage of fields

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24 <sup>39</sup> *Id.* Exhibit N (Feb. 21, 2025).

25 <sup>40</sup> *Id.* Exhibit E Figure 8-1 (Feb. 21, 2025).

26 <sup>41</sup> *Id.*

27 <sup>42</sup> *Id.* Appendix E to Exhibit C (Feb. 21, 2025).

28 <sup>43</sup> *Id.* Appendix D and F to Exhibit C (Feb. 21, 2025).

<sup>44</sup> *Id.* Exhibit N at 21 (Feb. 21, 2025).

1 under irrigation, provide limited information regarding the extent and location of irrigation  
2 in the parcels at issue in the Initial Designation Cases. Like the homestead proofs, the map  
3 and affidavit, at most, describe the extent of irrigation within areas encompassing the SDID  
4 claimants' parcels, but they do not describe the extent of irrigation within the parcels  
5 themselves. Additionally, the map and affidavit were prepared at least 59 years after the  
6 claimed priority date.

### 7 ***1916 Map***

8 The 1916 map, issued by the Army Corps of Engineers, is a broad depiction of  
9 "agricultural land" within the District.<sup>45</sup> It is clear that the Army Corps of Engineers did not  
10 intend for this map to be a precise depiction of irrigated lands in the District. For instance,  
11 while the 1916 map depicts every inch of Section 5, Township 18 South, Range 21 East as  
12 "agricultural land," the 1923 State Water Commissioner map labels many parcels in Section  
13 5 as "never cultivated."<sup>46</sup> The 1916 map has extremely limited application to the initial  
14 designated cases.

### 15 ***Conclusion***

16 As discussed above, *Gillespie* requires that SDID claimants demonstrate the  
17 "particular lands upon which [water was] used."<sup>47</sup> Neither the homestead proofs, the 1939  
18 map, 1942 affidavit, nor the 1916 map present any genuine issue of material fact as to  
19 whether claimants in the Initial Designated Cases can meet their burden to show extent and  
20 location of irrigation. The 1923 map, although not probative in five of the six Initial  
21 Designation Cases, does raise genuine issues of material fact in W1-11-2089.

22  
23 **IT IS ORDERED** dismissing the following claims:

- 24 • 112-17-DBA-247-OT001
- 25 • 112-17-DBA-088-OT001

26  
27 <sup>45</sup> *Id.* Exhibit E Figure 8-1 (Feb. 21, 2025).

28 <sup>46</sup> *Id.* Exhibit N (Feb. 21, 2025).

<sup>47</sup> *Gillespie*, 75 Ariz. 377, 384 (1953).

- 112-17-DBA-322-IR003
- 112-17-DBA-061-IR001
- 112-17-DBA-061-IR002
- 112-17-DBB-023-IR001

**IT IS ORDERED** preserving for trial the following claims:

- 112-17-DBA-087-IR001
- 112-17-DBA-087-IR002.

#### **1.2.2.2 W1-11-2697 *In re Hope Iselin Jones***

The U.S. and San Carlos seek a finding on summary judgment that C-Spear cannot prove essential historical details regarding its irrigation claims.<sup>48</sup> C-Spear filed a response asserting that a genuine issue of material fact exists regarding whether it can meet its evidentiary burden.<sup>49</sup>

C-Spear claims irrigation rights for two fields in Sections 29 and 32 of Township 12 South, Range 19 East. The “North Field” comprises 40.09 acres extending from the northwest quarter of Section 29 to the southwest quarter of 29.<sup>50</sup> The “South Field” comprises 71.62 acres in the north half of Section 32. C-Spear claims pre-1919 rights for 47.91 acres of the South Field and a certificated water right for the remaining 23.81 acres of that field.<sup>51</sup> The issue here is whether the evidence disclosed by C-Spear can prove the extent and location of pre-1919 irrigation on the 88 acres relating to C-Spear's pre-1919 claims.

In relation to the North Field, C-Spear disclosed the following: Juan Sosa’s 1882 homestead patent, a 1885 notice of appropriation recorded by Antonio Soza, and Rosaura

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<sup>48</sup> W1-11-2697, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2697, San Carlos Apache Tribe’s Motion for Partial Summary Judgment (Feb. 21, 2025).

<sup>49</sup> W1-11-2697, C-Spear LLC’s Response to the United States’ Amended Motion for Partial Summary Judgment (Mar. 21, 2025).

<sup>50</sup> W1-11-2697, C-Spear LLC’s Response to the United States’ Amended Motion for Partial Summary Judgment at 1 (Mar. 21, 2025).

<sup>51</sup> *Id.*



1 Soza's 1911 patent.<sup>52</sup> In relation to the South Field, C-Spear disclosed Jose Rodriguez's  
2 1889 homestead patent and Juan Sosa's 1882 homestead patent.<sup>53</sup> In support of claims  
3 pertaining to both fields, C-Spear points to a 1915 Department of the Interior ("DOI")  
4 survey, a 1921 State Water Commissioner map, and an 1899 United States Geological  
5 Survey ("USGS") report.

### 6 ***Homestead Documents***

7 As in the Initial Designation Cases, homestead documents are the earliest evidence  
8 of water use in *In re Hope Iselin Jones*. Here, the disclosed homestead documents face the  
9 same issues as those disclosed in the Initial Designation Cases. Juan Sosa's and Jose  
10 Rodriguez's 1882 and 1889 patent documents reveal, at most, a half-acre of irrigation in the  
11 northern 320-acres of Section 32.<sup>54</sup> Rosaura Soza's 1911 patent describes 12 acres of  
12 irrigation in the southwestern quarter of Section 29.<sup>55</sup> None of these documents describe  
13 with any particularity the location of historical irrigation within C-Spear's current parcel.

### 14 ***1885 Notice of Appropriation***

15 The notice of appropriation disclosed by C-Spear states that Antonio Soza began  
16 construction of a canal "at a point 250 feet more or less north of the point where the north  
17 line of Section 32" crosses the San Pedro River.<sup>56</sup> The notice goes on to state that Soza  
18 intended to conduct the water to lands owned by him.<sup>57</sup> Although the notice of appropriation  
19 is evidence of an intent to beneficially use water in the vicinity of the North Field, the notice  
20 does not describe extent or location of irrigation use.

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22  
23 <sup>52</sup> W1-11-2697, U.S. Amended Motion for Partial Summary Judgment at 13--15 (Feb. 27, 2025);  
24 W1-11-2697, C-Spear LLC's Response to the United States' Amended Motion for Partial Summary  
Judgment at 2-4, Exhibit B (Mar. 21, 2025).

25 <sup>53</sup> *Id.*

26 <sup>54</sup> W1-11-2697, U.S. Amended Motion for Partial Summary Judgment at 13, 15 (Feb. 27, 2025)

<sup>55</sup> *Id.* at 15.

27 <sup>56</sup> W1-11-2697, C-Spear LLC's Response to the United States' Amended Motion for Partial  
Summary Judgment at 3 (Mar. 21, 2025).

28 <sup>57</sup> *Id.*

1 ***1899 USGS Report and 1915 DOI Report***

2 The 1899 USGS report generally describes “canals diverting water from San Pedro  
3 River, Arizona” in a table.<sup>58</sup> For each canal, the USGS provided a general area to which the  
4 water was conveyed and the rate of discharge.<sup>59</sup> With respect to the “Soso” canal, the USGS  
5 indicated that water is applied to the “east side” at a rate of 2 cubic feet per second.<sup>60</sup>  
6 Providing slightly more depth, the 1915 DOI Report stated that the canal served 80 acres of  
7 cultivated land in 1914.<sup>61</sup> Neither document elucidates historical locations of irrigation with  
8 any reliability.

9 ***1921 State Water Commissioner Map***

10 The State Water Commissioner map produced by C-Spear depicts the boundaries of  
11 land irrigated in 1921 in the vicinity of today’s North Field and South Field.<sup>62</sup> The map  
12 identifies this land as owned by the “Soza Bros.”<sup>63</sup> The northern and western boundaries of  
13 the South Field closely follow the boundaries of the land irrigated in 1921. Likewise, the  
14 North Field deviates only slightly from those boundaries. Although, as the U.S. argues, the  
15 Water Commissioner map was published after 1919, the map indicates pre-1919 irrigation  
16 that significantly overlaps with the North Field and the South Field.<sup>64</sup>

17 ***Conclusion***

18 Out of the five sources of evidence presented to support C-Spear's claims, only the  
19 1921 State Water Commissioner Map can prove pre-1919 irrigation with any particularity.  
20 While this evidence only demonstrates historical irrigation occurring decades after C-

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22 <sup>58</sup> W1-11-2697, C-Spear, LLC’s Responsive and Additional Statements of Fact in Response to the  
23 United States’ Motion for Partial Summary Judgment ¶11 Exhibit A C-SPEAR000229 (March 21,  
24 2025).

24 <sup>59</sup> *Id.*

25 <sup>60</sup> *Id.*

26 <sup>61</sup> *Id.* ¶ 13 Exhibit A C-SPEAR000294 (March 21, 2025).

27 <sup>62</sup> W1-11-2697, C-Spear LLC’s Response to the United States’ Amended Motion for Partial  
28 Summary Judgment at 4 Exhibit C (Mar. 21, 2025).

<sup>63</sup> *Id.*

<sup>64</sup> W1-11-2697, U.S. Amended Motion for Partial Summary Judgment at 13 (Feb. 27, 2025).

1 Spear's claimed priority date, this evidence can nonetheless support a pre-1919  
2 appropriative right. Hence, whether C-Spear can meet its burden to prove historical  
3 irrigation is a genuine issue of material fact.

4  
5 **IT IS ORDERED** preserving for trial the following claims:

- 6 • 112-17-CAA-0001-IR001
- 7 • 112-17- CAA-0001-IR002.

8  
9 **1.2.2.3 W1-11-2708 *In re Norman G. and Barbara Y. Crawford***

10 Hartman Farms LLC (“Hartman”) asserts in its motion for summary judgment that a  
11 reasonable fact finder must accept the priority dates and quantities asserted in its irrigation  
12 claims.<sup>65</sup> The U.S. and San Carlos filed a cross-motion seeking a finding that Hartman  
13 Farms cannot prove essential historical facts underlying its irrigation claims.<sup>66</sup>

14 Hartman claims rights with respect to four fields intersecting Sections 4, 9, and 10  
15 of Township 13 South, Range 19 East: the “Nursery Field,” “Hunting Field,” “Vineyard  
16 Field,” and “19 Field.”<sup>67</sup> Hartman claims a February 28, 1879 priority date for 26.39 acres  
17 in the east half of the northeast quarter of Section 9 and the west half of the northwest quarter  
18 of Section 10 in Township 13 South, Range 19 East (the “south claim”).<sup>68</sup> Hartman claims  
19 a November 21, 1888 priority date for 16.08 acres in south half of the southeast quarter of  
20 Section 4 in Township 13 South, Range 19 East (the “north claim”).<sup>69</sup> Hartman’s claims  
21 rely on three lines of evidence: homestead documents filed between the late 1870s and early  
22

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23 <sup>65</sup> W1-11-2708, Hartman Farms LLC’s Motion for Partial Summary Judgment on Priority  
(Feb. 21, 2025).

24 <sup>66</sup> W1-11-2708, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-  
25 2708, San Carlos Apache Tribe’s Motion for Partial Summary Judgment (Feb. 21, 2025).

26 <sup>67</sup> W1-11-2708, Hartman Farms LLC’s Motion for Partial Summary Judgment on Priority at 2--3  
(Feb. 21, 2025).

27 <sup>68</sup> *Id.* at 2. This comprises all of the Hunting Field and Nursery Field and the portion of Vineyard  
Field in Section 9.

28 <sup>69</sup> *Id.* This comprises all of the 19 Field and the portion of the Vineyard Field in Section 4.

1890s, an 1879 U.S. General Land Office map, and a 1921 State Water Commissioner map.

***Homestead Documents and 1879 General Land Office Map***

As described above, Hartman makes two claims, each with their own priority date. In order to support its north claim, Hartman disclosed John Wesseliche's 1888 homestead patent, which asserts that fifty acres were cultivated in south half of the southeast quarter of Section 4 by November 1888.<sup>70</sup> To support its south claim, Hartman disclosed Blas Sanchez's 1879 homestead affidavit and Refugio Saenz's homestead patent, which together assert that, by February 1879, 35 acres were being cultivated in the east half of the northeast quarter of Section 9 and the west half of the northwest quarter of section 10.<sup>71</sup> Hartman also disclosed an 1879 map published by the United States General Land Office that appears to delineate specific areas of cultivated land within Saenz's homestead.

Like each homestead document discussed up to this point, Wesseliche's, Saenz's, and Sanchez's testimony, alone, fail to provide key details regarding historical irrigation. However, viewing the 1879 General Land Office map and Saenz and Sanchez's testimony in the light most favorable to Hartman, these items, together, may permit an inference regarding the extent and location of irrigation occurring in the area associated with the south claim.

***1921 State Water Commissioner Map***

The 1921 State Water Commissioner map is the most detailed evidence of historical irrigation that Hartman has disclosed. The map depicts two fields, an 18.1 acre field in the area associated with the north claim and a 39.4 acre field in the area associated with the south claim.<sup>72</sup> The 18.1 acre field largely encompasses the current 19 Field, while the 39.1 acre field encompasses the current Hunting and Nursery Fields. The map does not appear to depict the Vineyard Field. Given the significant correspondence between Hartman's

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<sup>70</sup> W1-11-2708, Hartman Farms LLC's Motion for Partial Summary Judgment on Priority at 7 (Feb. 21, 2025)

<sup>71</sup> *Id.* at 3, 7.

<sup>72</sup> W1-11-2708, Hartman Farms LLC's Motion for Partial Summary Judgment on Priority at 7, Exhibit B (Feb. 21, 2025).

claims and the 1921 State Water Commissioner map, the map raises a genuine issue of material fact regarding the extent and location of historical irrigation.

### ***Conclusion***

Refugio Saenz's and Blas Sanchez's homestead documents, coupled with the 1879 General Land Office map, raise genuine issues of material fact as to the location and extent of early irrigation associated with the north claim. By contrast, no source of evidence disclosed by Hartman specifies the location and extent of early irrigation associated with the south claim. Nonetheless, the 1921 State Water Commissioner map raises a genuine issue of material fact as to the extent and location of irrigation associated with both claims occurring in the late 1910s.

**IT IS ORDERED** preserving for trial the following claims:

- 113-12-DBC-009-IR090A
- 113-12-DBC-009-IR090B.

### ***1.2.3 DETERMINING PRIORITY DATE***

In the six Initial Designated Cases and *In re Norman G. and Barbara Y. Crawford*, claimants filed motions for summary judgment asserting that a reasonable fact finder must find that they can meet their burden to prove essential details of the historical appropriations underlying their claims.<sup>73</sup> In all cases, objectors filed motions for summary judgment asserting that the Court must find that the claimants cannot meet their burden.<sup>74</sup>

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<sup>73</sup> W1-11-2708, Hartman Farms LLC's Motion for Partial Summary Judgment on Priority (Feb. 21, 2025); W1-11-2081 *et al.*, St. David Irrigation District's Motion for Partial Summary Judgment on Priority (Feb. 21, 2025).

<sup>74</sup> W1-11-2708, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2708, San Carlos Apache Tribe's Motion for Partial Summary Judgment (Feb. 21, 2025); W1-11-2081 *e. al.*, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2081 *et al.*, San Carlos Apache Tribe's Motion for Partial Summary Judgment (Feb. 21, 2025); W1-11-2697, U.S. Amended Motion for Partial Summary Judgment (Feb. 27, 2025); W1-11-2697, San Carlos Apache Tribe's Motion for Partial Summary Judgment (Feb. 21, 2025).

1 Before the enactment of the Water Code, the priority date of a water right related  
2 back to “the initiation of the appropriation” if the water user “exercise[d] reasonable  
3 diligence in every step required to” perfect his or her appropriation. *Maricopa Cty. Mun.*  
4 *Water Conservation Dist. No. 1. v. Southwest Cotton Co.*, 39 Ariz. 65, 102–103 (1935). If  
5 the water user failed to use reasonable diligence to perfect the appropriation, the priority  
6 date would correspond to the date of the perfection of the use. *Southwest Cotton*, 39 Ariz.  
7 65,100 (1935).

8 Prior to 1893, an appropriation could be initiated through an “open, physical  
9 demonstration of intent to take for beneficial use.” *Phelps Dodge Corp. v. Arizona Dep 't of*  
10 *Water Res.*, 211 Ariz. 146, 149 (Ct. App. 2005). Between 1893 and the enactment of the  
11 Water Code, an appropriation could be initiated only by application of water to beneficial  
12 use or recording a notice of intent to appropriate with the county recorder. *Phelps Dodge*,  
13 211 Ariz. at 149 ¶ 14.

14 Therefore, in accordance with the common law, any claimant seeking to apply the  
15 relation-back doctrine to a pre-1919 claim must prove three threshold facts: the date that the  
16 appropriation was initiated, the date that the appropriation was perfected, and reasonable  
17 diligence in perfecting the appropriation.

### 18 **1.2.3.1 Initial Designation Cases**

19 The District moved for summary judgment seeking a priority date of March 1, 1880,  
20 for each of the SDID claimants, corresponding to the date of filing of a notice of  
21 appropriation marking the start of the construction of the St. David Canal.<sup>75</sup> In its Motion,  
22 the District justified that priority date on the grounds 1) that the canal served the historical  
23 appropriations underlying its claims, 2) that the canal was diligently constructed, and 3) that  
24 the 1886 *Clifford v. Larrieu* decision declared a “spring of 1880” priority date for the  
25 “Community of St. David.”<sup>76</sup>

26 San Carlos and the U.S. moved for summary judgment asserting that, as a matter of

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27 <sup>75</sup> . W1-11-2081 *et al.*, SDID Motion for Summary Judgement at 13 (Feb. 21, 2025).

28 <sup>76</sup> *Id.* at 5, 14—15 (Feb. 21, 2025).

1 law, the District must independently establish a priority date for each claim.<sup>77</sup> The Tribe and  
2 the U.S. argue that the SDID claimants cannot prove a priority date for any of its members’  
3 claims because none of the documents disclosed prove perfected or initial water use.<sup>78</sup>  
4 Specifically, San Carlos asserted that, for each claim, the District cannot identify the date  
5 when “water was originally put to use on the parcel identified in the claim.”<sup>79</sup> The Court  
6 addresses the District’s and the objectors’ arguments in turn.

7 First, the Court rejects the objectors’ assertion that, as a matter of law, the SDID  
8 claimants cannot prove a priority date for its claims. As discussed earlier, a genuine issue of  
9 material fact exists concerning whether the District can prove perfected beneficial uses for  
10 112-17-DBA-087-IR001 and –IR002.<sup>80</sup> Further, although the SDID claimants cannot prove  
11 the dates of initial use associated with those claims, that does not entirely foreclose the  
12 application of the relation-back doctrine. The relation back doctrine requires proof of “the  
13 initiation of the appropriation,” not necessarily proof of initial diversion or application of  
14 water.<sup>81</sup> Moreover, neither San Carlos nor the U.S. has argued that the claimants cannot  
15 prove reasonable diligence between the March 1, 1880, Notice of Appropriation and the  
16 perfection of its claimed rights. Therefore, a genuine issue of material fact exists as to  
17 whether the District can prove its claimed spring 1880 priority date for 112-17-DBA-087-  
18 IR001 and -IR002.

19 Second, the evidence presented in the SDID motion does not compel the finding that  
20 March 1, 1880, is the priority date for either of the above claims. As the San Carlos points  
21 out, mere “use of the District’s ditch does not establish that any potential claimant acquired  
22

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23 <sup>77</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe Motion for Summary Judgement at 10 (Feb. 21,  
24 2025).

25 <sup>78</sup> *Id.* at 13 (Feb. 21, 2025). U.S. Motion for Summary Judgement at 23—31 (Feb. 21, 2025).

26 <sup>79</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe Motion for Summary Judgement at 11--12.

27 <sup>80</sup> As outlined previously, 112-17-DBA-087-IR001 and 112-17-DBA-087-IR002 are the only  
28 claims for which SDID claimants can possibly prove perfected beneficial use. Accordingly, the  
Court evaluates the relevant motions only in relation to those claims.

<sup>81</sup> *Southwest Cotton Co.*, 39 Ariz. 65, 102–103 (1935); *Phelps Dodge*, 211 Ariz. 146, 150 ¶¶ 18-19  
(2005).

1 a right to appropriate water appurtenant to a particular parcel on a particular date.”<sup>82</sup> As  
2 discussed above, the only evidence of a perfected irrigation appropriation is a 1923 State  
3 Water Commissioner map depicting irrigated lands in the vicinity of the District. To the  
4 extent that the map proves a perfected appropriation, the SDID claimants must then prove  
5 reasonable diligence between March 1880 and the date of perfection suggested by the map.

6 **1.2.3.2 W1-11-2697 *In re Hope Iselin Jones***

7 C-Spear claims a June 30, 1885 priority date for the North Field based on Antonio  
8 Soza’s June 30, 1885 notice of appropriation and claims an April 8, 1880, priority date for  
9 a portion the South Field based on Juan Sosa’s 1882 homestead patent.<sup>83</sup> Asserting that each  
10 document reflects the initiation of an appropriation, C-Spear seeks the application of the  
11 relation-back doctrine.<sup>84</sup> Specifically, C-Spear states that, given “complications in acquiring  
12 the ranch” and circumstances requiring landowners to change the “points of diversions . . .  
13 to their fields,” C-Spear’s predecessors exercised reasonable diligence in completing their  
14 appropriations by 1921.<sup>85</sup> San Carlos and the U.S. argue that C-Spear cannot prove the  
15 claimed priority dates because none of the documents disclosed evidence of the perfection  
16 or initial use associated with the claimed water rights.<sup>86</sup> C-Spear did not file a motion for  
17 summary judgment but filed a response to the San Carlos and the U.S.’s motions.

18 To start, the Court evaluates C-Spear’s assertions regarding the North Field. C-Spear  
19 has demonstrated that Antonio Soza’s 1885 notice of appropriation describes an irrigation  
20 ditch located a few hundred feet away from the North Field.<sup>87</sup> According to the notice, Soza

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21 <sup>82</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe Motion for Summary Judgement at 12 (Feb. 21,  
22 2025).

23 <sup>83</sup> W1-11-2697, C-Spear Response to U.S. Motion for Summary Judgement at 5 (Feb. 21, 2025). C-  
24 Spear claims pre-1919 rights for only a portion of the South Field. For the remainder of the South  
Field, C-Spear claims rights on the basis of certificate of water right 33-12062.

25 <sup>84</sup> *Id.*

26 <sup>85</sup> *Id.*

27 <sup>86</sup> W1-11-2697, San Carlos Motion for Summary Judgement at 7 (Feb. 21, 2025); W1-11-2697,  
U.S. Amended Motion at 12-17 (Feb. 27, 2025).

28 <sup>87</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, C-Spear Consolidated Response at Exhibit B  
(March 21, 2025).



1 intended to convey water to lands “below owned and occupied by me.”<sup>88</sup> Although the  
2 notice does not provide the historical extent or location of irrigation, the notice permits an  
3 inference that the named ditch served at least a portion of the North Field.<sup>89</sup>

4 The filing of a notice of appropriation for a canal intended to serve a beneficial use  
5 may reflect the initiation of an appropriation. Further, the 1921 State Water Commissioner  
6 map may depict the perfection of the appropriation underlying C-Spear's North Field claim.  
7 Therefore, a genuine issue of material fact exists regarding whether C-Spear may obtain  
8 1885 rights to the North Field.

9 Nonetheless, C-Spear cannot apply the relation-back doctrine to the South Field.  
10 Juan Sosa’s 1882 homestead patent does not permit the same type of inference as Antonio  
11 Soza’s notice of appropriation. The 1882 homestead patent, as established previously,  
12 merely describes water use somewhere in an unidentified portion of a 160-acre parcel. The  
13 Court cannot infer that this homestead document represents the initiation of water use in the  
14 South Field. Although the relation back doctrine does not apply to C-Spear's pre-1919 claim  
15 for the South Field, a genuine issue of material fact exists regarding whether the 1921 State  
16 Water Commissioner map represents the perfection of a pre-1919 water right associated the  
17 North Field.

### 18 **1.2.3.3 W1-11-2708 *In re Norman G. and Barbara Y. Crawford***

19 In its motion for summary judgment, Hartman asserts that the homestead documents  
20 filed by Refugio Saenz, Blas Sanchez, and John Wesseliche, coupled with the 1879 General  
21 Land Office map, reflect the earliest evidence of water use on its property. Pursuant to  
22 homestead documents filed by Refugio Saenz and Blas Sanchez, Hartman claims a priority  
23 date of February 28, 1879, for its “south claim.”<sup>90</sup> Pursuant to a homestead document filed  
24 by John Wesseliche, Hartman claims a November 21, 1888 priority date for its “north

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25 <sup>88</sup> *Id.* at 3; W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Additional Statements of Fact in Support  
26 of C-Spear’s Consolidated Response, ¶¶ 7-8.

27 <sup>89</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, C-Spear Consolidated Response at Exhibit B  
(March 21, 2025).

28 <sup>90</sup> W1-11-2708, Hartman Farms LLC, Motion for Summary Judgement at 3 (Feb. 21, 2025).

claim.”<sup>91</sup> As in the Initial Designation Cases, San Carlos and the U.S. argue in response that Hartman cannot prove a priority date for any of its claims because none of the documents disclosed prove perfected or initial water use.<sup>92</sup>

With respect to the north claim, Hartman cannot relate the priority date for the north claim back to 1888 on the evidence disclosed. The Wesseliche homestead document only vaguely discusses water use in an 80-acre parcel surrounding the north claim. Therefore, that document cannot represent the initiation of an appropriation. At most, a genuine issue of material fact exists regarding whether Hartman can obtain a later priority date in accordance with the 1921 State Water Commissioner map.

With respect to the south claim, a genuine issue of material fact exists regarding whether Hartman can relate the priority date back to 1879. The 1879 General Land Office map, together with the Saenz and Sanchez homestead documents, could reasonably represent the initiation of an appropriation. As previously discussed, the 1879 General Land Office map illustrates an irrigated field potentially consistent with the description of irrigation in the Sanchez homestead document. To the extent that the 1879 General Land Office map represents the initiation of an appropriation, Hartman must then prove reasonable diligence in perfecting that appropriation.

#### ***1.2.4 EVALUATING FORFEITURE CLAIMS.***

The U.S. alleges in each contested case that there “appear to have been multiple extended periods of non-use of acreage claimed for irrigation.”<sup>93</sup> The United States’ expert witness, Dr. Thomas Ley reviewed the applicable Arizona Department of Water Resources’ (“ADWR”) Watershed File Reports (“WFRs”), State Water Commissioner survey maps, and aerial images of the properties at issue to quantify changes in irrigated acreage over

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<sup>91</sup> *Id.*

<sup>92</sup> W1-11-2708, San Carlos Motion for Summary Judgement at 7-8 (Feb. 21, 2025); W1-11-2708 U.S. Amended Motion for Summary Judgement at 13-16 (Feb. 27, 2025).

<sup>93</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, United States’ Statement of Facts in Support of Response to Claimants’ Motion for Partial Summary Judgment on Forfeiture and Abandonment ¶ 12 (Feb. 21, 2025).

1 time.<sup>94</sup> The U.S. also cites the WFR for the *Crawford* case that reported that the agency had  
2 “determined that no irrigation has occurred on this property in the last five years, but there  
3 has been irrigation within the past ten years based upon a review of historical aerial  
4 photography and field investigations.”<sup>95</sup> The WFR itself does not contain any additional  
5 historical information or data to support ADWR’s statement.

6 Hartman disclosed the opinions of its expert, Christopher Garrett, who disputes Dr.  
7 Ley's analysis of irrigated acreage in each Contested Case.<sup>96</sup> Hartman also provided with its  
8 Motion documents generated by ADWR during its evaluation of the *Crawford* property  
9 that indicate no data (irrigation or non-irrigation) was available to ADWR for the years  
10 1985, 1986, or 1988, and lists acreages of 46.3 for the years 1984 and 1987.<sup>97</sup>

11 The elements of forfeiture and abandonment are well established in Arizona law.  
12 Failure to use water for at least five successive years will result in forfeiture unless a  
13 statutory exclusion applies.<sup>98</sup> Abandonment, however, does not require nonuse for a specific  
14 period of time, but instead it requires both nonuse and an intent to abandon the right. *Phelps*  
15 *Dodge Corp.* 211 Ariz. 146, 151 (2005).

#### 16 **1.2.4.1 Standard of Proof for Forfeiture and Abandonment.**

17 Claimants urge the Court to adopt a standard of proof from other legal contexts and  
18 other states (Idaho, Nevada, and Utah)<sup>99</sup> for all Arizona water rights adjudications.<sup>100</sup>

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19 <sup>94</sup> *Id.* at ¶ 13.

20 <sup>95</sup> WFR 113- 12-DBC-009, Hydrographic Survey Report for the San Pedro River Watershed  
21 (November 1991) and United States’ Response to Claimants’ Motion for Partial Summary Judgment  
22 on Forfeiture and Abandonment (Feb. 21, 2025).

23 <sup>96</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimant’s Statement of Facts in Support of  
24 Motion for Partial Summary Judgment on Forfeiture and Abandonment ¶ 9 (Feb. 21, 2025).

25 <sup>97</sup> *Id.* at Exhibit M.

26 <sup>98</sup> Ariz. Rev. Stat. §§45-141(C) and 45-189(E).

27 <sup>99</sup> *Jenkins v. State, Dep’t of Water Res.*, 647 P.2d 1256, 1261 (Idaho 1982); *Town of Eureka v. Office*  
28 *of State Engineer of State a/Nev., Div. a/Water Resources*, 826 P.2d 948,952 (Nev. 1992); *In re*  
*General Determination of Rights to Use All Water, Both Surface & Underground, Within the*  
*Drainage Area of Utah Lake & Jordan River*, 98 P.3d 1, 15 n.3 (Utah 2004).

<sup>100</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Additional Claimant’s Motion for Partial  
Summary Judgment on Forfeiture and Abandonment at 9-10 (Feb. 21, 2025).

1 Currently the Arizona statute regarding forfeiture of a water right neither requires a  
2 heightened standard of proof nor implies that one should be applied. The law is simply five  
3 consecutive years of non-use shall result in the loss of any previous right to use water, unless  
4 an appropriate statutory exclusion is applicable.<sup>101</sup> All water right holders are on notice that  
5 a water right will be lost if extended non-use occurs. If the legislative intent underlying  
6 Arizona's forfeiture provisions was to “disfavor” a non-use forfeiture or abandonment, the  
7 legislature would have required the heightened standard in the statutory text as has been  
8 done numerous times throughout Arizona’s statutes, including other Title 45 statutes dealing  
9 with water resources.<sup>102</sup> As the statute reads today, however, there is no heightened standard.

### 10 ***Initial Designation Cases***

11 The United States’ expert, Dr. Thomas Ley, by his own admission, offers opinions  
12 only on years for which aerial photography is available, as well as the 1921 State Water  
13 Commissioner map. Between the years of 1935 to 2021, just over 20 individual years of  
14 aerial photographs are available, with no more than one photo per year. This includes a  
15 number of years when the photographs do not appear to document the irrigated acreage.  
16 There are multiple periods of five years or more where no photograph or other  
17 documentation has been presented: 1936-1946, 1957-1963, and 1997-2002.

18 The District does not provide a competing explanation; rather, the argument is that  
19 the limited nature of Dr. Ley’s opinions make the opinions irrelevant and that there is  
20 insufficient evidence to demonstrate forfeiture or abandonment of any water rights by a  
21 failure to irrigate for five or more years.<sup>103</sup>

### 22 ***W1-11-2697 In re Hope Iselin Jones***

23 Both the U.S. and C-Spear’s arguments regarding the C-Spear property are a repeat  
24 of assertions in the Initial Designation Cases. Again Dr. Ley reviewed the 1921 State Water

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25 <sup>101</sup> Ariz. Rev. Stat. §45-141.

26 <sup>102</sup> See Ariz. Rev. Stat. §§ 45-133; 45-476.01; and 45-575, where in all cases the statute specifically  
27 requires “clear and convincing” evidence for a determination.

28 <sup>103</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimant’s Reply in Support of Motion for Partial  
Summary Judgment on Forfeiture and Abandonment at 6-8 (April 11, 2025).

Commissioner Survey map and aerial photos of the lands in question and again approximately 20 aerial images of the C-Spear property taken from 1935 to 2021, with no more than one photo per year. Periods of five years or more where no photograph or other documentation was presented include 1936-1955, 1957-1964, 1966-1970, and 1997-2002. Additionally, there are conflicting interpretations of potential variability of the acreage irrigated during the years of irrigation.

***W1-11-2708 In re Norman G. and Barbara Y. Crawford***

Once more, Dr. Ley reviewed the 1921 State Water Commissioner Survey map and approximately 15 aerial images of the Hartman Farms property taken from 1935 to 2021, with no more than one photo per year. Periods of five years or more where no photograph or other documentation presented include 1936-1955, 1957-1964, 1966-1970, 1972 – 1982, 1984 – 1991, and 1997-2002.

WFR 113-12-DBC-009 indicated that irrigation had been discontinued for the five years prior to 1990.<sup>104</sup> However, the “WFR Inventory” accompanying ADWR’s investigation file contradicts implication of forfeiture with no information available for 1985, 1986, or 1988. A 1989 Landsat image analyzed by the Claimant’s expert Mr. Garrett indicates fully planted vegetation and cleared lands which corroborates with testimony of claimant Barbara Crawford that she “irrigated the property at issue . . . continuously from . . . 1989 to 2007.”<sup>105</sup>

***Conclusion***

Neither the Arizona Legislature, nor any Arizona case law, has given an indication that issues of water right forfeiture or abandonment should be evaluated using a standard of proof more stringent than preponderance of the evidence. Irrespective of the standard of proof, the U.S. has presented evidence of periods of time where irrigation does not appear to have occurred and thus conflicts with the evidence supplied by Claimants. Genuine

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<sup>104</sup> FN 72 *supra*.

<sup>105</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimant’s Statement of Facts in Support of Motion for Partial Summary Judgment on Forfeiture and Abandonment at 5 ¶¶ 12-14 (February 21, 2025.)

1 disputes of material fact exist between the evidence supplied by the U.S. and the Claimants,  
2 and reasonable minds could draw differing conclusions from the evidence. These differing  
3 reasonable inferences make summary judgment on the issues of forfeiture and abandonment  
4 inappropriate.

5  
6 **IT IS ORDERED** denying *Claimants’ Motion for Partial Summary Judgment on*  
7 *Forfeiture and Abandonment*. A heightened standard of proof does not apply to forfeiture.  
8 The Court rejects Claimant’s requested finding that, as a matter of law, the U.S. cannot  
9 prove forfeiture or abandonment.

#### 10 11 ***1.2.5 EVALUATING CHANGES IN DIVERSION***

12 It is a hallmark of the prior appropriation doctrine that “appropriators acquire rights  
13 to the stream . . . as it exists when they find it.” *Montana v. Wyoming*, 563 U.S. 368, 375  
14 (2011); *Farmers Highline Canal & Reservoir Co. v. City of Golden*, 129 Colo. 575, 272  
15 P.2d 629 (1954). Accordingly, junior water users may prevent senior users from changing  
16 certain characteristics of their water rights “to the junior users’ detriment.” *Montana*, 563  
17 U.S. at 377. In Arizona, an appropriator “has the burden of establishing that a change in his  
18 diversion or in his use of water has not negatively affected the rights of other appropriators.”  
19 *Zannaras v. Bagdad Copper Corp.*, 260 F.2d 575, 577 (9<sup>th</sup> Cir. 1958).

20 The no-injury rule generally applies to changes to location of diversion, place of use,  
21 and purpose of use. *Montana*, 563 U.S. at 379. Where the no-injury rule applies, it precludes  
22 changes of use that increase the consumptive use of water. *See 3G AG LLC v. Idaho Dep’t*  
23 *of Water Res.*, 509 P.3d 1180, 1193 (2022); *see also 1 Waters and Water Rights* § 14.04(c)(1)  
24 (2024). In many jurisdictions, the no-injury rule also precludes changes or enlargements to  
25 the timing of use. *Barron v. Idaho Dep’t of Water Res.*, 18 P.3d 219, 225 (Idaho 2001); *Santa*  
26 *Fe Trail Ranches Prop. Owners Ass’n v. Simpson*, 990 P. 2d 46, 58 (Colo. 1999); *East Bench*  
27 *Irr. Co. v. Deseret Irr. Co.*, 271 P.2d 449, 458 (Utah 1954).

28 It is undisputed that every claim at issue in the Initial Designation Cases, *Jones*, and

1 *Crawford* involves a historical change from purported surface water diversions to subflow  
2 pumping.<sup>106</sup> GRIC, joined by San Carlos,<sup>107</sup> makes two primary arguments that the Court  
3 should not recognize these changes of use.<sup>108</sup> First, GRIC argues that Claimants cannot meet  
4 their burden to prove non-injury.<sup>109</sup> Second, GRIC, joined by San Carlos, argues  
5 affirmatively that the changes in use injured other water users.<sup>110</sup>

6 In response, Claimants jointly assert that, as a matter of law, the Claimants' switch  
7 to wells is outside the scope of the no-injury rule.<sup>111</sup> The Claimants further assert that, even  
8 if the no-injury rule applies, a genuine issue of material fact exists regarding whether  
9 Claimants can meet their burden and whether injury in fact occurred.<sup>112</sup> In particular,  
10 Claimants state that the Methodology and Water Duty stipulations, as a matter of law,  
11 establish baseline conditions by which to measure potential injury and rebut, by citing to  
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13 <sup>106</sup> Claimants' wells are located within the subflow zone and are therefore presumed to be pumping  
14 appropriable water. Claimants offer no evidence to rebut the presumption.

15 <sup>107</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe's Motion for Partial Summary Judgment at 17 (Feb.  
16 21, 2025); W1-11-2697, San Carlos Apache Tribe's Motion for Partial Summary Judgment at 10  
17 (Feb. 21, 2025); W1-11-2708, San Carlos Apache Tribe's Motion for Partial Summary Judgment at  
18 11-12 (Feb. 21, 2025).

19 <sup>108</sup> In addition to contesting changes in diversion from surface water to wells, GRIC asserts that  
20 Claimants cannot prove original places of use and points of diversion. Therefore, according to  
21 GRIC, Claimants cannot prove "whether consumptive use . . . increased from the changes to the  
22 irrigated fields," and they cannot prove non-injury regarding historical changes to surface water  
23 diversions. W1-11-2081 *et al.*, Claimants' Consolidated Response to Gila River Indian  
24 Community's Motions for Summary Judgment at 8-9 (Mar. 21, 2025). In August 2024, the Court  
25 ruled that GRIC is "precluded from pursuing objections to . . . water rights attributes" and limited  
26 GRIC to asserting claims that Claimants' changes of use "are injurious to the water rights of the  
27 Community." W1-11-2081 *et al.*, Minute Entry (Aug. 30, 2024). Therefore, in order to participate  
28 in these cases, GRIC must point to specific injuries. While GRIC may pursue objections regarding  
injuries arising from claimants' known switch to groundwater diversions, GRIC has not alleged  
specific injuries resulting from particular changes to places of use or points of surface water  
diversion. With respect to the latter, GRIC is precluded.

<sup>109</sup> W1-11-2081 *et al.*, Gila River Indian Community's Motion for Summary Judgment at 8 (Feb.  
21, 2025)

<sup>110</sup> *Id.* at 13-15

<sup>111</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Consolidated Response to Gila River  
Indian Community's Motion for Summary Judgment at 10-15 (Mar. 21, 2025).

<sup>112</sup> *Id.* at 15-17.

expert reports, GRIC’s claims of enlargement and injury.<sup>113</sup>

### ***Application of the No-Injury Rule to Changes in Points of Diversion***

Citing *Montana v. Wyoming*, 563 U.S. 368 (2011), and *Arizona Public Service Company v. Long*, 160 Ariz. 429 (1989), Claimants make two arguments that the no-injury rule does not apply to their predecessors’ changes in diversion. First, Claimants argue that, under the doctrine of recapture, increases in consumptive use and reductions in return flow are outside the scope of the no-injury rule “if the irrigated acreage and quantity of diverted water remain the same.”<sup>114</sup> Second, they argue that Claimants’ substitution of wells for surface water diversions are “changes in irrigation methods” exempt from the no-injury inquiry.<sup>115</sup>

In both *Montana* and *Long*, the U.S. and Arizona supreme courts discuss the doctrine of recapture.<sup>116</sup> Briefly stated, the U.S. Supreme Court found that, in *Montana* and *Wyoming*, increases in consumptive use due to recapture do not cause injury to other appropriators if the recaptured water is used “for the same purpose on the same land.”<sup>117</sup> In *Long*, the Arizona Supreme Court held that multiple Arizona cities that divert water from the Salt and Gila Rivers could discontinue historic return flows to those streams to the injury of downstream junior appropriators.<sup>118</sup> The court specifically held that “[n]o appropriator can compel any other appropriator to continue the waste of water which benefits the former.”<sup>119</sup>

The Claimants read *Long* and *Montana* to provide a broad license to change a point of diversion even if the change causes an increase in consumptive use. Claimants overread these cases. In *Montana*, the Court expressly states that the no-injury rule generally concerns

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 14.

<sup>115</sup> *Id.*

<sup>116</sup> *Montana*, 563 U.S. 368 at 380 (2011); *Long*, 161 Ariz.429 at 437-438 (1989).

<sup>117</sup> *Montana* at 563 U.S. 368 at 380-382.

<sup>118</sup> *Long* 160 Ariz. 429 at 439.

<sup>119</sup> *Id.* at 438.



1 changes to the “diversion and the place or purpose of use.”<sup>120</sup> Though the Supreme Court  
2 found that Montana and Wyoming treat reuse of wastewater more permissively, it viewed  
3 such a change as a separate category.<sup>121</sup> Likewise, the portion of *Long* cited by Claimants is  
4 limited to the reuse of wastewater. Moreover, the ultimate holding in *Long* was predicated  
5 on grounds distinct from the doctrine of recapture, namely that the water at issue, treated  
6 wastewater, was neither surface water nor groundwater.<sup>122</sup>

7 In addition to asserting that the doctrine of recapture precludes application of the no-  
8 injury rule, Claimants also assert that their switch to wells was a mere “change in irrigation  
9 methods” under *Montana*.<sup>123</sup> Although the U.S. Supreme Court in *Montana* held that “a  
10 change in irrigation methods does not appear to run afoul” of the no-injury rule in Montana  
11 and Wyoming, the Court carefully defined such changes.<sup>124</sup> Excluding “changes in the  
12 location of the diversion and the place or purpose of use,” the Court defined “changes in  
13 irrigation methods” as switching “to a more water intensive crop” and “ordinary operational  
14 changes or repairs.”<sup>125</sup> Claimants’ changes to their points of diversion do not resemble  
15 either of the examples described; switching to wells changes the character of a water right.

16 In short, Claimants’ historical changes in diversion are not entirely exempt from the  
17 scope of the no-injury rule. Even where the quantity of water diverted and irrigated acreage  
18 remain constant, the no-injury rule generally precludes changes to points of diversion that  
19 result in harm to downstream appropriators.

## 20 ***Sufficiency of Evidence to Establish Baseline Conditions***

21 GRIC asserts that no claimant in these cases can prove non-injury because they have  
22 not disclosed any records documenting the baseline conditions of claimants’ diversions, i.e.

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24 <sup>120</sup> *Montana*, 563 U.S. 368 at 378.

25 <sup>121</sup> *Id.* at 381

26 <sup>122</sup> *Long*, 160 Ariz. 429 at 437.

27 <sup>123</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et. al.* Claimants’ Consolidated Response to Gila River  
Indian Community’s Motion for Summary Judgment at 14 (March 21, 2025).

28 <sup>124</sup> *Montana*, 563 U.S. 368 at 378.

<sup>125</sup> *Id.* at 378-379.

claimants' original diversion volumes.<sup>126</sup> Further, GRIC asserts that Claimants' estimate of the quantity of original diversions disregards "historical constraints" on the water supply.<sup>127</sup> In response, Claimants assert that the Water Duty and Methodology Stipulations resolve the "baseline conditions" issue.<sup>128</sup> Additionally, Claimants cite expert testimony derived from the historical record to demonstrate original diversion volumes.<sup>129</sup> The Court addresses GRIC's objections to the Initial Designation Cases and the *Jones/Crawford* cases separately.

With respect to the Initial Designation Cases, the Water Duty and Methodology Stipulations resolve the baseline conditions inquiry as a matter of law. Establishing baseline conditions is largely the same task as determining the quantity of the original appropriation. Requiring an independent calculation for the change of use issue could result in inconsistent findings regarding basic facts. In addition, an independent calculation would, in effect, reopen the issue of quantification and create an end run around the Methodology and Water Use Stipulations. As a result, the Court finds that, to the extent that SDID claimants can prove historical irrigated acreage, the SDID claimants can prove baseline conditions for purposes of the no-injury rule.

Likewise, although the Stipulations are mostly irrelevant to the *Jones* and *Crawford* cases, the claimants in those cases have raised genuine issues of material fact regarding baseline conditions. As discussed above, claimants in the *Jones* and *Crawford* cases adopted estimates of water duties prepared by the U.S.'s expert Dr. Thomas Ley.<sup>130</sup> Claimants also offer meaningful support from the historical record that the adopted water duties might

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<sup>126</sup> W1-11-2081 *et al.*, Gila River Indian Community's Motion for Summary Judgment at 12-13 (Feb. 21, 2025).

<sup>127</sup> *Id* at 13.

<sup>128</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Consolidated Response to the Gila River Indian Community's Motion for Summary Judgment at 7 (Mar. 21, 2025).

<sup>129</sup> *Id* at 15-16; W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Responsive and Additional Statements of Fact in Support of Response to Gila River Indian Community's Motions for Summary Judgment at 5 ¶ 16 (Mar. 21, 2025).

<sup>130</sup> *Claimants' Motion for Partial Summary Judgment on Irrigation Water Duties* at 6-7 (Feb 21, 2025); Statement of Facts to Claimants' Motion for Partial Summary Judgment on Irrigation Water Duties ¶¶ 22, 24 (Feb 21, 2025).

1 reflect actual, historical diversions. This evidence is derived from streamflow records,  
2 USGS reports, and accounts of historical farming practices. Claimants' Consolidated  
3 Response to Gila River Indian Community's Motions for Summary Judgment; Claimants'  
4 Responsive and Additional Statements of Fact in Response to the Gila River Indian  
5 Community's Motions for Summary Judgment at 56 ¶ 19.

### 6 ***Irrigation Duration***

7 It is undisputed that the District has supplemented and continues to supplement its  
8 surface water diversions with water from two irrigation wells, i.e. the “Electric Well” and  
9 the “Diesel Well.”<sup>131</sup> In addition to alleging that Claimants cannot prove non-injury, GRIC  
10 argues that the installation of the wells caused injurious enlargements. GRIC asserts that the  
11 installation of the wells caused the District to extend its irrigation season, increase its  
12 diversions, and diminish flows “at critical times.”<sup>132</sup> GRIC cites purported increases in crop  
13 yields to support its assertions.

14 GRIC argues that, between “about April or May until November,” surface water is  
15 unavailable at the Dam, and that the District “has always had trouble capturing flows at the  
16 Dam during the months from June to November.”<sup>133</sup> Specifically, GRIC points out that  
17 “monsoon flooding” washed out the dam annually, and that the “St. David area had no  
18 surface flow available for irrigation during the late summer (July and August).”<sup>134</sup> GRIC  
19 therefore concludes that “SDID has diverted from the wells at times when surface flow was  
20 not” historically available.<sup>135</sup>

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22 <sup>131</sup> W1-11-2081 *et al.*, Gila River Indian Community’s Separate Statement of Material Facts ¶¶ 1-2  
23 (Feb. 21, 2025); W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants’ Responsive and  
24 Additional Statements of Fact in Support of Response to Gila River Indian Community’s Motions  
25 for Summary Judgment at 2 ¶¶ 1-2 (March 21, 2025).

26 <sup>132</sup> W1-11-2081 *et al.*, Gila River Indian Community’s Motion for Summary Judgement at 16  
(February 21, 2025).

27 <sup>133</sup> W1-11-2081 *et al.*, Gila River Indian Community’s Motion for Summary Judgement at 13  
(February 21, 2025).

28 <sup>134</sup> W1-11-2081 *et al.*, Gila River Indian Community’s Separate Statement of Material Facts ¶¶ 16,  
21 (Feb. 21, 2025).

<sup>135</sup> *Id.* at ¶ 42 (Feb. 21, 2025).

1 Claimants contest GRIC's assertion that streamflow was not available to the District  
2 during certain portions of the year, citing expert testimony regarding the historical  
3 availability of flow, specifically between the years 1904 and 1940.<sup>136</sup> Likewise, in the *Jones*  
4 and *Crawford* cases, Claimants' expert opined that, based on observations made in 1934,  
5 that "irrigation would have occurred during the summer months on those properties."<sup>137</sup>  
6 Claimants also contest the credibility of the source for GRIC's "dam washout," contending  
7 that it is based solely on the testimony of a single person, the frequency and breadth of  
8 whose observations is not known.<sup>138</sup> Claimants assert that, by installing the wells, the  
9 District did not seek to augment historical diversions, but rather make up for dwindling  
10 streamflow resulting from large upstream diversions.<sup>139</sup>

11 The dueling expert opinions presented by Claimants and GRIC reveal complex  
12 questions regarding the reasons for the installation of the wells and the effect of the wells  
13 on the Claimants' timing of use and quantity of diversions. Clearly, genuine issues of  
14 material fact exist regarding whether Claimants can prove that the installation of the wells  
15 did not enlarge Claimants' appropriations.

### 16 ***Crop Yields***

17 GRIC also asserts that "crop yields have more than tripled on the lands at issue here  
18 since the Wells were installed."<sup>140</sup> GRIC asserts that Claimants cannot prove that the  
19 increase in crop yields did not result from increased water diversions.<sup>141</sup> Further, GRIC  
20

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21 <sup>136</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Consolidated Response to the Gila  
22 River Indian Community's Motion for Summary Judgement at 5 ¶ 16 (Mar. 21, 2025).

23 <sup>137</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Responsive and Additional  
24 Statements of Fact in Support of Response to Gila River Indian Community's Motions for Summary  
25 Judgment at 57 ¶ 22 (March 21, 2025).

26 <sup>138</sup> *Id.* at 23 ¶ 15.

27 <sup>139</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Responsive and Additional  
28 Statements of Fact in Support of Response to Gila River Indian Community's Motions for Summary  
Judgment at 7 ¶ 26 (March 21, 2025).

<sup>140</sup> W1-11-2081 *et al.*, Gila River Indian Community's Motion for Summary Judgement at 14  
(February 21, 2025).

<sup>141</sup> *Id.*

1 asserts that it is undisputed that the increases in crop yields have caused reductions in return  
2 flows through attendant “crop evapotranspiration increases.”<sup>142</sup>

3 In response to GRIC’s assertion that the increased crop yields represent increased  
4 diversions to the lands at issue in these cases, Claimants point out that GRIC’s assertion  
5 regarding the tripling of crop yields is based on “state-wide crop yield data for years prior  
6 to 1959.”<sup>143</sup> Claimants also cite expert testimony that supplied multiple alternative  
7 explanations, namely “more efficient harvests, irrigation system innovations, weed and pest  
8 management, improved cultivars, and improved soil fertilization, soil condition, and  
9 agronomic practices.”<sup>144</sup>

10 Genuine issues of material fact exist concerning GRIC’s “crop yield” argument.  
11 Viewing the proffered evidence in the light most favorable to Claimants, it is far from clear  
12 that state-wide increased crop yields represent increased yields on Claimants’ lands, let  
13 alone increased diversions to Claimants’ lands. Moreover, even assuming that crop yields  
14 increased on the relevant lands, Claimants have proffered substantial evidence that this  
15 increase and any reductions in return flow would have been the result of increased efficiency  
16 beyond the scope of the no-injury rule. GRIC’s assertions regarding crop yield raise more  
17 questions than they answer. The Court therefore preserves issues concerning crop yield for  
18 trial.

19 Furthermore, even given a ready solution to the above factual issues, a lack of clarity  
20 regarding certain points of law would prevent the Court from granting GRIC’s Motions for  
21 Summary Judgment. Specifically, the parties must clarify certain issues of first impression  
22 that are before the Court:

- 23 • Assuming that the Water Duty stipulation has established a conclusive quantification

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24 <sup>142</sup> *Id.* at 7 ¶ 48

25 <sup>143</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants’ Responsive and Additional  
26 Statements of Fact in Support of Response to Gila River Indian Community’s Motions for Summary  
Judgment at 58 ¶ 25 (March 21, 2025).

27 <sup>144</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants’ Consolidated Response to the Gila  
28 River Indian Community’s Motion for Summary Judgement at 16 (Mar. 21, 2025).

1 procedure, are allegations of enlargement material?

- 2 • Why should an improper enlargement of an otherwise proper appropriation cause the  
3 forfeiture or dismissal of the right in its entirety?

4  
5 **IT IS ORDERED** denying Gila River Indian Community's Motions for Summary  
6 Judgment.

7 **2.0. DE MINIMIS CLAIMS**

8 Because the factual and legal bases for Claimants' irrigation claims are currently  
9 before the Court, San Carlos asserts that it is in the interest of judicial economy to consider  
10 at this time challenges to the priority dates of all Claimants' claims, including proposed *de*  
11 *minimis* claims for domestic and stockwatering uses. The Court agrees.

12  
13 **2.1 DOMESTIC USE CLAIMS**

14 Summary adjudication procedures for court-determined *de minimis* uses are intended  
15 to find the balance between claimants' needs for specification of water rights, and the  
16 efficient uses of resources for small, or "de minimis" uses of appropriable water.<sup>145</sup>  
17 Summary adjudication procedures, however must follow the requirements recommended  
18 by Special Master Thorson and subsequently approved by Judge Ballinger.<sup>146</sup> Thorson  
19 recommended, and Ballinger affirmed, that "[i]ndividual domestic uses for single  
20 residences, when serving household purposes and associated outdoor activities on adjoining  
21 land not exceeding 0.2 acres are de minimis,"<sup>147</sup> and "[the] quantity of 'not to exceed 1 ac-  
22 ft/year' of water will be adjudicated for domestic rights supplied by the landowner or  
23 occupant from a well or surface water source providing water for a single family household

24  
25 <sup>145</sup> W1-11-19, Memorandum Decision, Findings of Fact, and Conclusions of Law for Group 1 Cases  
26 Involving Stockwatering, Stockponds, and Domestic Uses (Nov. 14, 1994), ("San Pedro *De*  
*Minimis* Decision") at 11.

27 <sup>146</sup> See generally San Pedro *De Minimis* Decision and W1-11-19, Order Approving Special Master's  
28 1994 De Minimis Decision (Sept. 27, 2002), ("San Pedro *De Minimis* Order").

<sup>147</sup> San Pedro *De Minimis* Decision at 33.

1 and associated outdoor activities on adjoining land not exceeding 0.2 surface acres.”<sup>148</sup>

2 San Carlos argues that because the priority dates stated in the Statements of Claim  
3 are “unclear, ambiguous, and not credible, the dates stated therein should not be  
4 accepted.”<sup>149</sup> San Carlos relies on the Special Master’s 1994 *Memorandum Decision*,  
5 *Findings of Fact and Conclusions of Law for Group 1 Cases Involving Stockwatering*,  
6 *Stockpond and Domestic Uses* (“*San Pedro De Minimis Decision*”):

7 If the watershed file report is incomplete or ambiguous, then the priority date will be  
8 determined by . . . judicial decree or Water Rights Registration Act filing . . . or other  
9 admissible credible evidence.<sup>150</sup>

10 While *de minimis* procedures limit the scope of objections to the proposed claims, a  
11 credible priority date is still required. The *De Minimis Report* does not substantively alter  
12 the necessary elements of a water right, pre-1919 or otherwise. The streamlined procedures  
13 merely establish that certain elements of a potential right documented by ADWR in the  
14 WFR may be presumed correct.<sup>151</sup>

### 15 ***Initial Designation Cases***

16 The three domestic claims initially presented for these contested cases are 112-17-  
17 DBA-061-DM001 (Christensen), 112-17-DBA-087-DM001 (Cochise County Investments),  
18 and 112-17-DBB-023-DM001 (Salomon and Manchester). However, the District indicated  
19 in its consolidated response to the Tribe’s Motion that 112-17-DBA-061-DM001 has been  
20 withdrawn. The remaining SDID claimants each claim a well located on, and serving a  
21 residence on, their respective property.

### 22 ***W1-11-2697 In re Hope Iselin Jones***

23 C-Spear initially asserted three *de minimis* domestic claims related to its property.  
24 During the April 17, 2025 oral argument, counsel for C-Spear, LLC confirmed that domestic

---

25 <sup>148</sup> *Id.*

26 <sup>149</sup> W1-11-2081 *et al.*, San Carlos Apache Tribe’s Motions for Partial Summary Judgement at 14  
27 (February 21, 2025).

28 <sup>150</sup> San Pedro De *Minimis* Decision at 42.

<sup>151</sup> *Id.*

claims 113-12-CAA-001-DM001B and C have been withdrawn, therefore only 113-12-CAA-001-DM001A is being claimed.<sup>152</sup> Various homestead documents indicate that settlers built a number of homes near C-Spear's current property between approximately 1878 and 1905. C-Spear alleges it is entitled to pre-1919 domestic water rights, but no evidence supports that any claims were established before 1919. C-Spear has not disclosed evidence tying any of the identified homesteads to any of the buildings now located on C-Spear's property, nor has C-Spear disclosed any information indicating when the residential buildings on the property were constructed, or an estimated date of completion for the one domestic well on the property, registered as #55-613619.

***W1-11-2708 In re Norman G. and Barbara Y. Crawford***

Hartman asserts two *de minimis* domestic claims related to its property: 113-12-DBC-009-DM001A and B. The claimed priority dates match those asserted for related irrigation claims: a priority date of February 8, 1879, for one residence, and a priority date of November 21, 1888, for the other. Besides a Water Rights Registration Act filing, Hartman does not provide specific evidence relating the current residence locations to the original homesteads.

***Conclusions***

Domestic use claims of less than 1 acre-foot/year qualify as *de minimis* claims in the San Pedro River Basin. The assertions of a priority date prior to 1919 for these claimed domestic uses have been argued as lacking credible evidence of the claimed priority dates. Nonetheless, where a claim is subject to summary adjudication procedures, the *De Minimis* Decision requires the Court to determine priority dates according to “the earliest date set forth in a judicial decree or Water Rights Registration filing.”<sup>153</sup> The Court understands that Claimants are attempting to negotiate in good faith with the other parties regarding the domestic *de minimis* claims. A June 18, 2025, status report is due to the Court regarding the progress of these negotiations. To the extent the parties continue to negotiate, the Court

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<sup>152</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Minute Entry at 9 (May 1, 2025).

<sup>153</sup> San Pedro *De Minimis* Decision at 42



permits the negotiations to continue.

**IT IS ORDERED** that priority dates for the following claims will be determined according to the earliest dates set forth in applicable Water Rights Registration Filings:

- 112-17-DBB-023-DM001
- 112-17-DBA-087-DM001
- 113-12-CAA-001-DM001A
- 113-12-DBC-009-DM001A & B

## **2.2 APPLICATION OF *DE MINIMIS* PROCEDURES TO NON-INSTREAM STOCK WATERING.**

San Carlos also argues that *de minimis* stock watering claims should be denied because the *de minimis* procedures apply only to instream stock watering, and do not apply to stock watering supplied by wells.<sup>154</sup> The *De Minimis* Decision defines stockwatering beneficial use as “unimproved and improved instream watering by stock []without storage.”<sup>155</sup>

The Special Master has previously applied summary adjudication to stockwatering uses supplied by wells in the San Pedro River Watershed for contested case W1-11-3395, *In re Karen LeCount*.<sup>156</sup> However, as required in *In re Karen LeCount*, and more recently with *de minimis* claims in *In re San Pedro Riparian National Conservation Area*, where the attributes of a summarily adjudicated water right differ from the WFR, amendments to the underlying WFR are necessary.<sup>157</sup>

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<sup>154</sup> W1-11-2697, San Carlos Apache Tribe’s Motions for Partial Summary Judgement at 9 (March 21, 2025), W1-11-2708, San Carlos Apache Tribe’s Motions for Partial Summary Judgement at 11 (March 21, 2025),

<sup>155</sup> San Pedro *De Minimis* Report at 5, 13.

<sup>156</sup> W1-11-3395, Order Approving Proposed Water Right Abstract [115-05-DA-001-SW001] (Jan. 4, 2023).

<sup>157</sup> W1-11-232, Approval of Abstracts and Inclusion in the Catalog of Proposed Water Rights and Order to File Progress Schedules at 7 (December 5, 2024).

1 ***St. David Irrigation District Initial Designation Cases***

2 The three stockwatering claims presented for these contested cases are: 112-17-  
3 DBA-061-SW001 (Christensen), 112-17-DBA-087-SW001 (Cochise County Investments),  
4 and 112-17-DBB-023-SW001 (Salomon and Manchester). All three Claimants have  
5 identified the same wells for stockwatering as for their domestic use, presumably from a  
6 well that fills a stock pond or tank.<sup>158</sup> No specific evidence has been provided of continuous  
7 stock use since before 1919 on any of the three properties, and ADWR did not identify any  
8 potential water rights for stockwatering in the WFRs which relate to these claims.<sup>159</sup>

9 ***W1-11-2697 In re Hope Iselin Jones***

10 C-Spear claims a right to water stock using a "reasonable" quantity of water, or no  
11 more than 2.69 acre-feet per year, with points of diversion from **both** the San Pedro River  
12 and four individual wells numbered 55-613619, 55-087190, 55-613609, and 55-805947.<sup>160</sup>  
13 ADWR did not list potential stockwatering rights for 113-12-CAA-001 in the WFR, but did  
14 list apparent dates of first use for small reservoirs for irrigation and stockwatering as 1955  
15 and 1990.<sup>161</sup> However, to date no claims related to stockponds have been asserted.

16 ***W1-11-2708 In re Norman G. and Barbara Y. Crawford***

17 Hartman claims a right to water stock using a "reasonable" quantity of water, or no  
18 more than 0.67 acre-feet per year, using both the banks of the San Pedro River and four  
19 individual wells numbered 55-617543, 55-617544, 55-617545, and 55-617546 as points of  
20 diversion.<sup>162</sup> Hartman ostensibly uses the wells to water stock or to fill stockponds on the  
21 property, however no claims related to stockponds have been asserted to date.

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23 <sup>158</sup> W1-11-2697, W1-11-2708, W1-11-2081 *et al.*, Claimants' Consolidated Response to the San  
24 Carlos Apache Tribe's Motions for Partial Summary Judgement at 9 FN 13 (March 21, 2025).

25 <sup>159</sup> W1-11-2081 *et al.*, San Carlos Statement of Facts in Support of Motion for Summary Judgement  
26 ¶¶ 32, 34, 36 (Feb. 21, 2025).

27 <sup>160</sup> W1-11-2697, San Carlos Statement of Facts in Support of Motion for Summary Judgement ¶ 19  
(Feb. 21, 2025).

28 <sup>161</sup> *Id.* at 20.

<sup>162</sup> W1-11-2708, San Carlos Statement of Facts in Support of Motion for Summary Judgement ¶ 12  
(Feb. 21, 2025).

1  
2 **Conclusions**

3 Stockpond and stockwatering claims qualify as *de minimis* claims in the San Pedro  
4 River Basin so long as the use is appropriately included in a WFR and supported by a basis  
5 of right. The Court understands that Claimants are attempting to negotiate in good faith  
6 with the other parties regarding the domestic *de minimis* claims. A June 18, 2025, status  
7 report is due to the Court regarding the progress of these negotiations. To the extent the  
8 parties continue to negotiate, the Court permits the negotiations to continue.

9 **IT IS ORDERED** that summary adjudication procedures apply to the following  
10 claims:

- 11 • 112-17-DBA-061-SW001
- 12 • 112-17-DBB-023-SW001
- 13 • 112-17-DBA-087-SW001
- 14 • 113-12-CAA-001-SW001
- 15 • 113-12-DBC-009-SW001

16 **IT IS FURTHER ORDERED** the **June 18, 2025**, status report on the negotiations  
17 for *de minimis* domestic and stockwatering uses shall be a **joint status report** that includes  
18 the opinions of all parties on the progress and likelihood of resolution.

19  
20 **3.0 PRETRIAL CONFERENCE**

21 **IT IS ORDERED** setting a pretrial conference for **Wednesday, May 21, 2025, at**  
22 **9:00 a.m.** for contested cases **W1-11-2697 - *In re Hope Iselin Jones*** and **W1-11-2708 -**  
23 ***In re Norman G. and Barbara Y. Crawford.*** The pretrial conference will be held using the  
24 Court Connect program. Instructions for Court Connect are attached as Attachment A. If  
25 you receive this Order by email, click on the red box “Join Court Connect Hearing” on the  
26 attached instructions to make an appearance. If you do not receive this Order by email, log  
27 into the Court Connect program on the internet by typing  
28 <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may

1 attend telephonically using the telephone number and access code included in the  
2 instructions for Court Connect.

3  
4 DATED this 13<sup>th</sup> day of May, 2025.

5  
6  
7  
8 Sherri Zendri  
Special Master  
9

10  
11 On May 13, 2025, the original of the  
12 foregoing was mailed to the Clerk of the  
13 Maricopa County Superior Court for filing and  
14 distributing a copy to all persons listed on the  
Court approved mailing list for this contested  
case.

15  
16  
17 Emily Natafe  
18  
19  
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## APPENDIX A

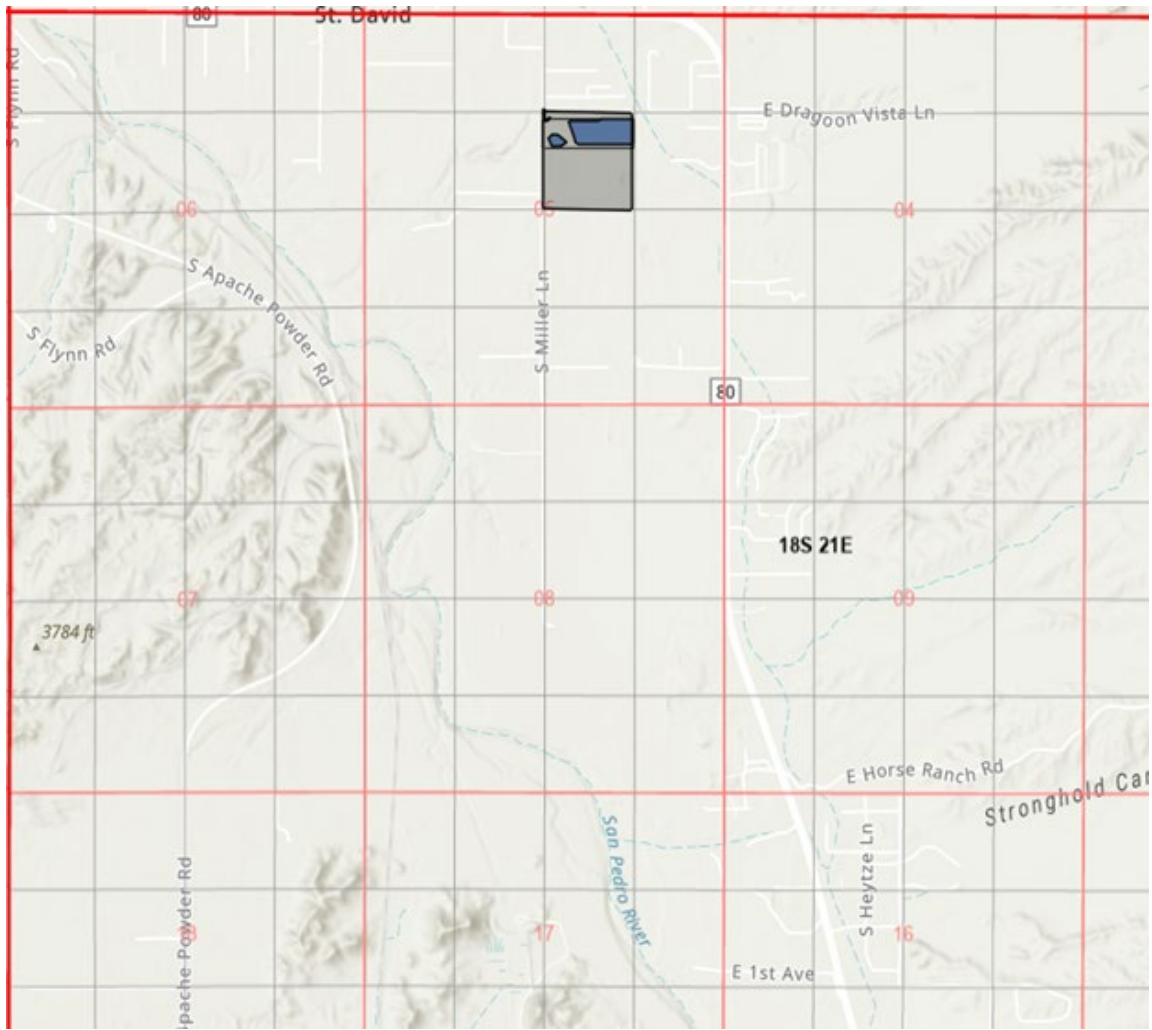
Case No.	Current Landowner	PWR No.	Claimed Priority Date	Total Acreage	Quantity of Water (AFA)	Status
W1-11-2081	Petra Christensen	112-17-DBA-061-IR001	11/29/1877	0.32	1.79	Dismissed
		112-17-DBA-061-IR002	11/29/1877	6.78	37.97	Dismissed
		112-17-DBA-061-DM001	11/29/1877	N/A	1.0	Withdrawn
		112-17-DBA-061-SW001	11/29/1877	N/A	Reasonable Use	Dismissed
W1-11-2089	Barbara Salomon and Justin Manchester	112-17-DBA-087-IR001	11/29/1877	14.50	81.2	<b>Proceed to trial</b>
		112-17-DBA-087-IR002	11/29/1877	0.21	1.18	<b>Proceed to trial</b>
		112-17-DBA-087-DM001	11/29/1877	N/A	1.0	De minimis Review
		112-17-DBA-087-SW001	11/29/1877	N/A	Reasonable Use	Dismissed
W1-11-2090	William Warskow	112-17-DBA-088-OT001	11/29/1877	0.49	2.74	Dismissed
W1-11-2111	William Warskow	112-17-DBA-247-OT001	11/29/1877	0.18	1.01	Dismissed
W1-11-2119	Kuman and Connie Taylor	112-17-DBA-322-IR003	11/29/1877	2.85	15.96	Dismissed
W1-11-2128	Cochise County Investments	112-17-DBB-023-IR001	11/29/1877	6.77	37.91	Dismissed
		112-17-DBB-023-DM001	11/29/1877	N/A	1.0	De minimis Review
		112-17-DBB-023-SW001	11/29/1877	N/A	Reasonable Use	Dismissed
W1-11-2697	C-Spear, LLC	113-12-CAA-001-IR001	4/8/1880	47.81	383.91	<b>Proceed to trial</b>
			6/1/1979	23.81	140.72	<b>Proceed to trial</b>
		113-12-CAA-001-IR002	6/30/1885	40.09	321.92	<b>Proceed to trial</b>
		113-12-CAA-001-DM001A	4/27/1878	N/A	1.0	De minimis Review
		113-12-CAA-001-DM001B	10/31/1905	N/A	1.0	Withdrawn
		113-12-CAA-001-DM001C	4/8/1880	N/A	1.0	Withdrawn
		113-12-CAA-001-SW001	4/8/1880	N/A	Reasonable Use	Dismissed
W1-11-2708	Hartman Farms, LLC	113-12-DBC-009-IR090A	11/21/1888	16.08	126.07	<b>Proceed to trial</b>
		113-12-DBC-009-IR090B	2/28/1879	26.39	206.90	<b>Proceed to trial</b>
		113-12-DBC-009-DM001A	2/28/1879	N/A	1.0	De minimis Review
		113-12-DBC-009-DM001B	11/21/1888	N/A	1.0	De minimis Review
		113-12-DBC-009-SW001	2/28/1879	N/A	Reasonable Use	Dismissed

# **APPENDIX B – MAPS**






*All maps are for illustrative purposes only*

**WFR 112-17-DBA-061**

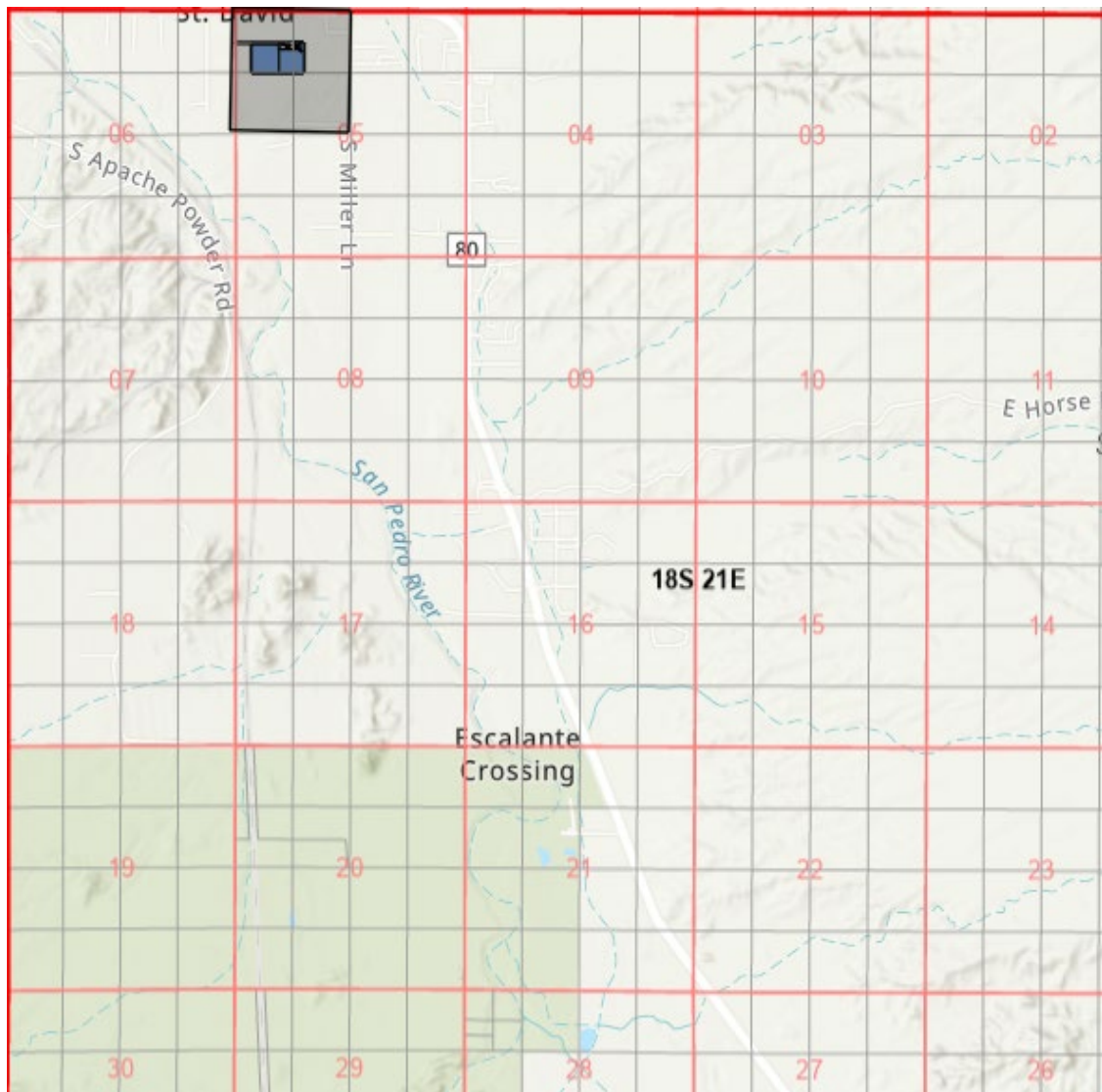
**(W1-11-2081)**








**LEGEND**

-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  Area currently irrigated
-  Area described in the Homestead Patent

(W1-11-2089)



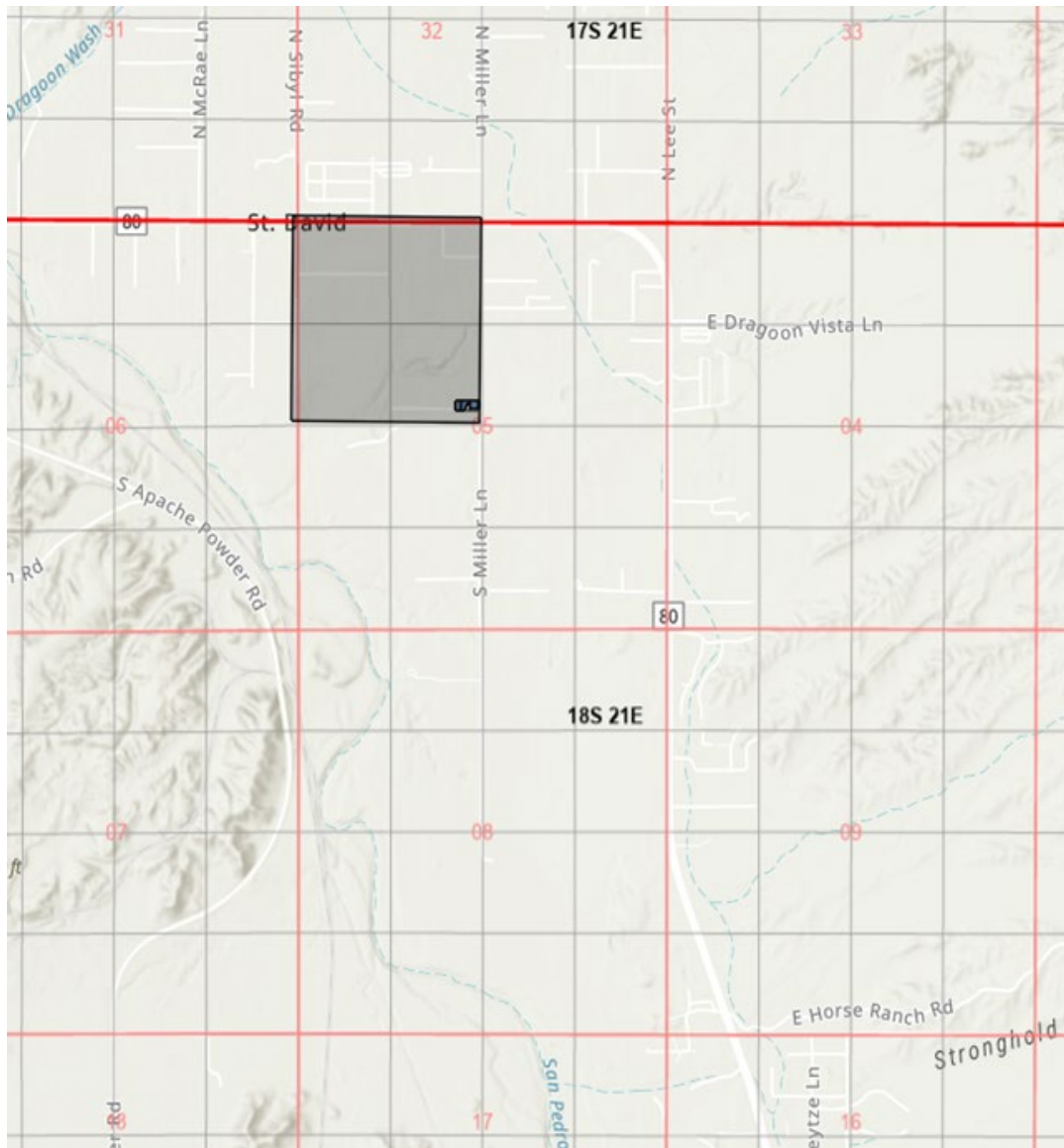
## LEGEND

- |   |  |
|---|--|
|  | Quarter/Quarter Section (40 acres)     |
|  | Section (160 acres)                    |
|  | Township and Range                     |
|  | Area currently irrigated               |
|  | Area described in the Homestead Patent |








**WFR 112-17-DBA-088**

**(W1-11-2090)**

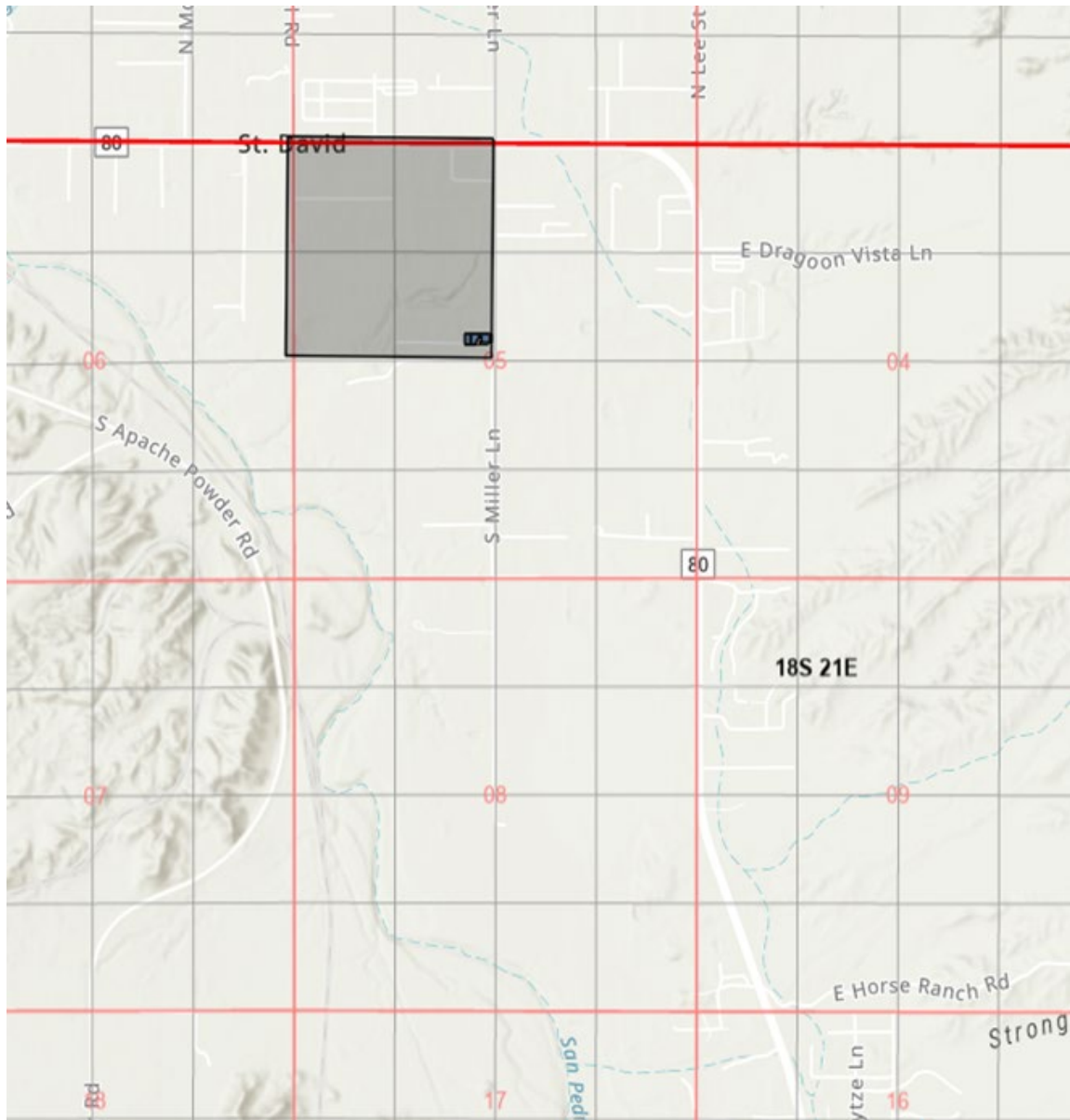


**LEGEND**





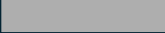
-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  Area currently irrigated
-  Area described in the Homestead Patent

**WFR 112-17-DBA-247**

**(W1-11-2111)**

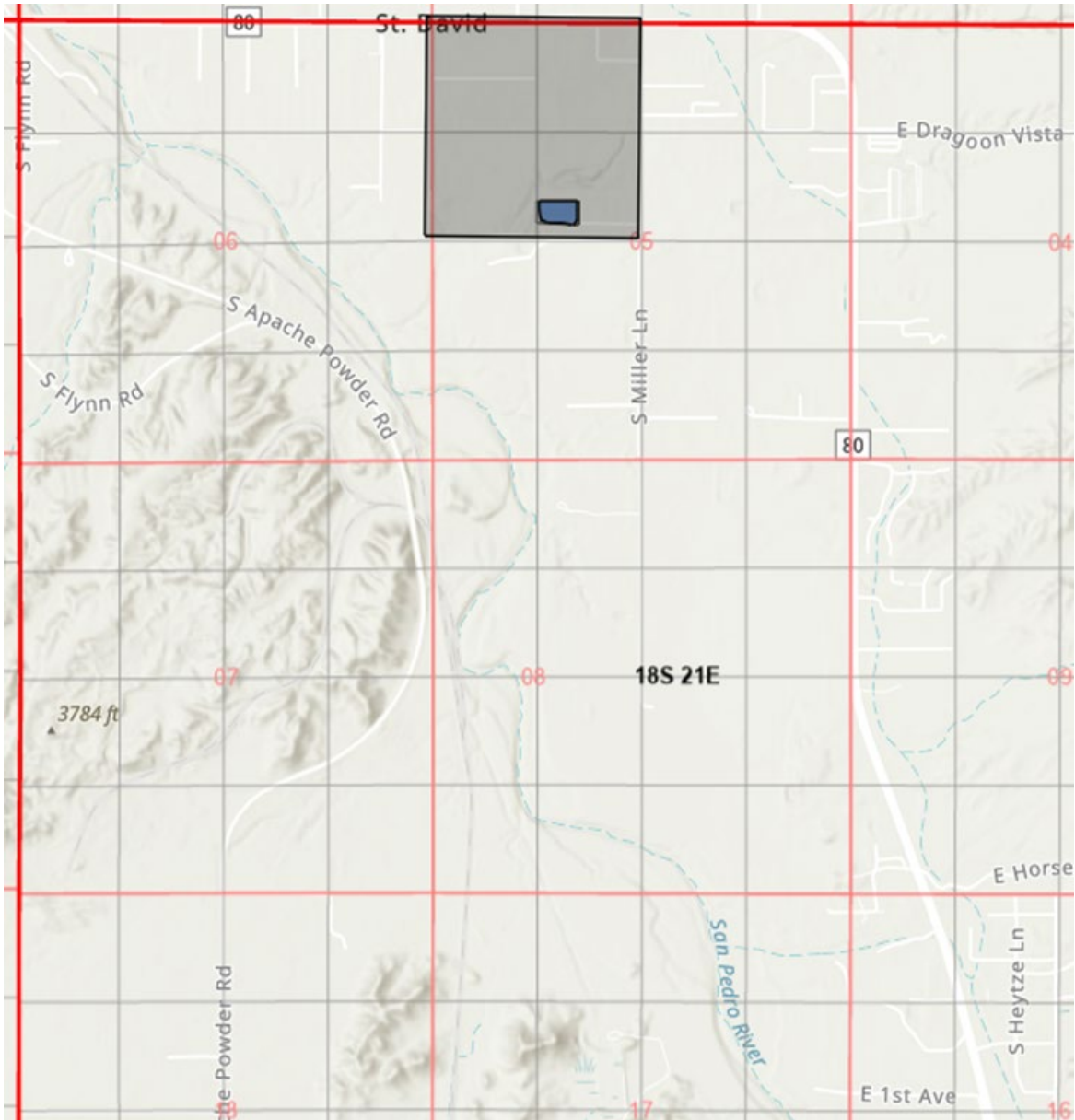


**LEGEND**






-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  Area currently irrigated
-  Area described in the Homestead Patent

**WFR 112-17-DBA-322**

**(W1-11-2119)**

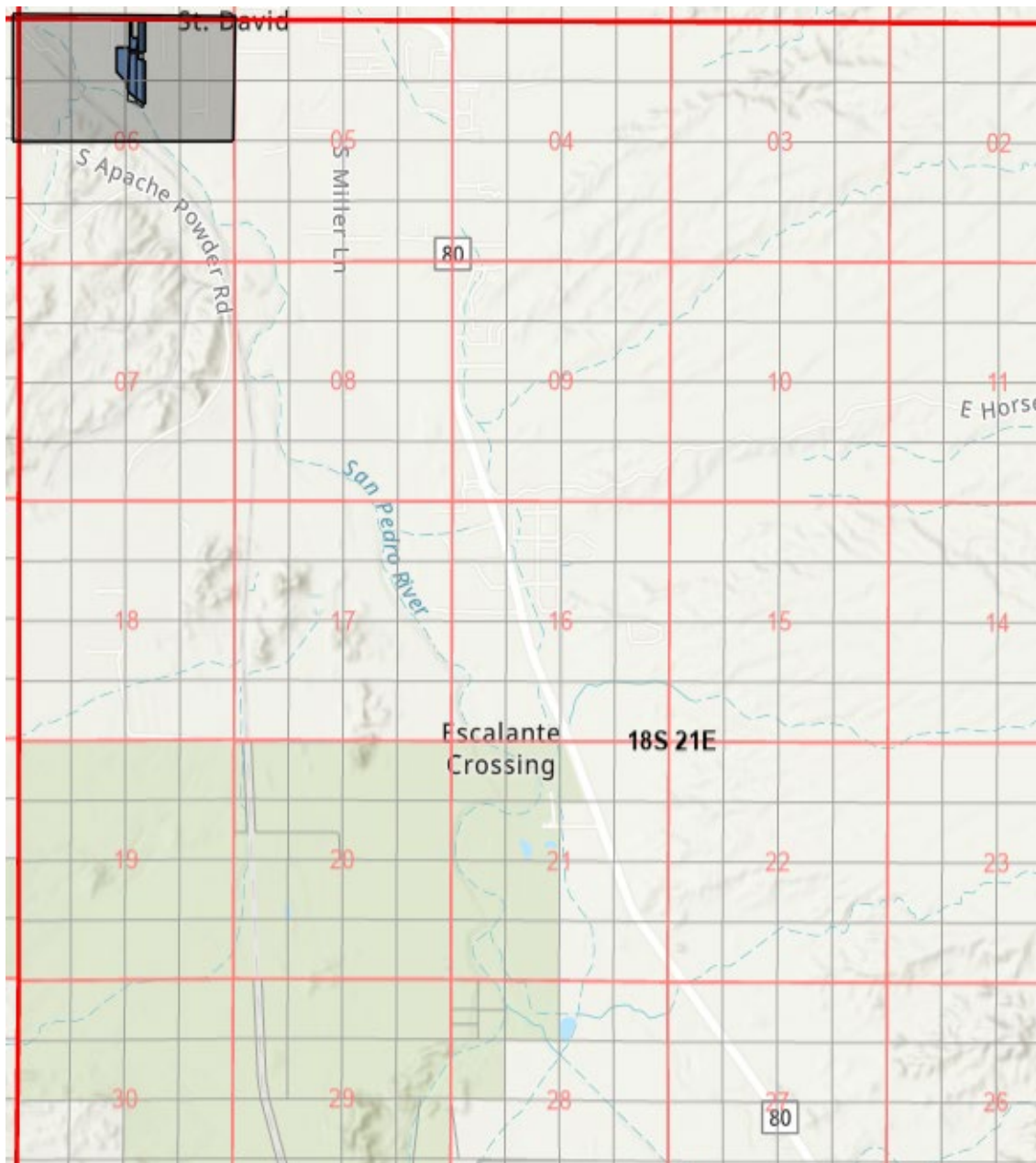


**LEGEND**






-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  Area currently irrigated
-  Area described in the Homestead Patent

**WFR 112-17-DBB-023**

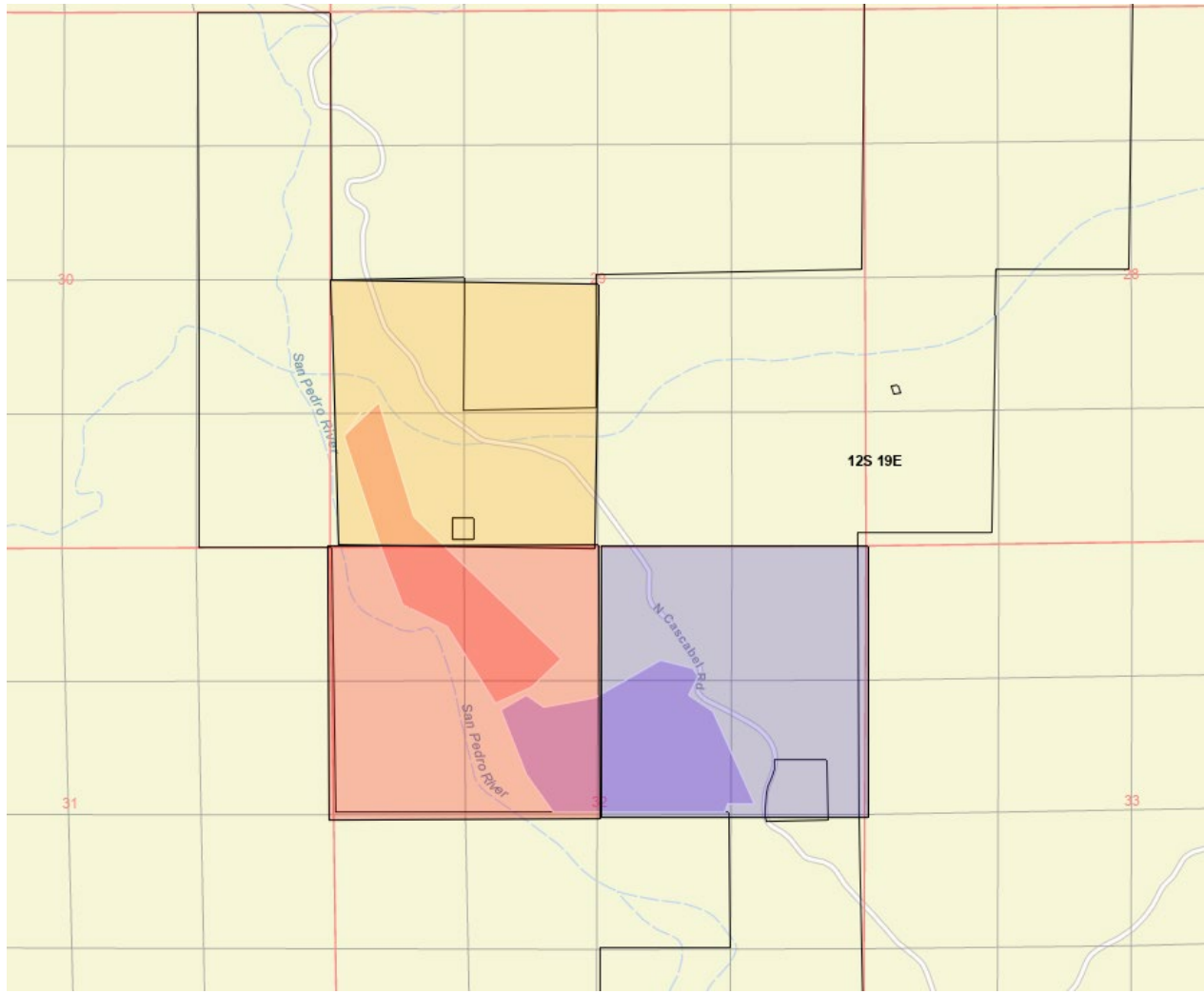
**(W1-11-2128)**



**LEGEND**

-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  Area currently irrigated
-  Area described in the Homestead Patent

**WFR 113-12-CAA-001**  
**(W1-11-2697)**

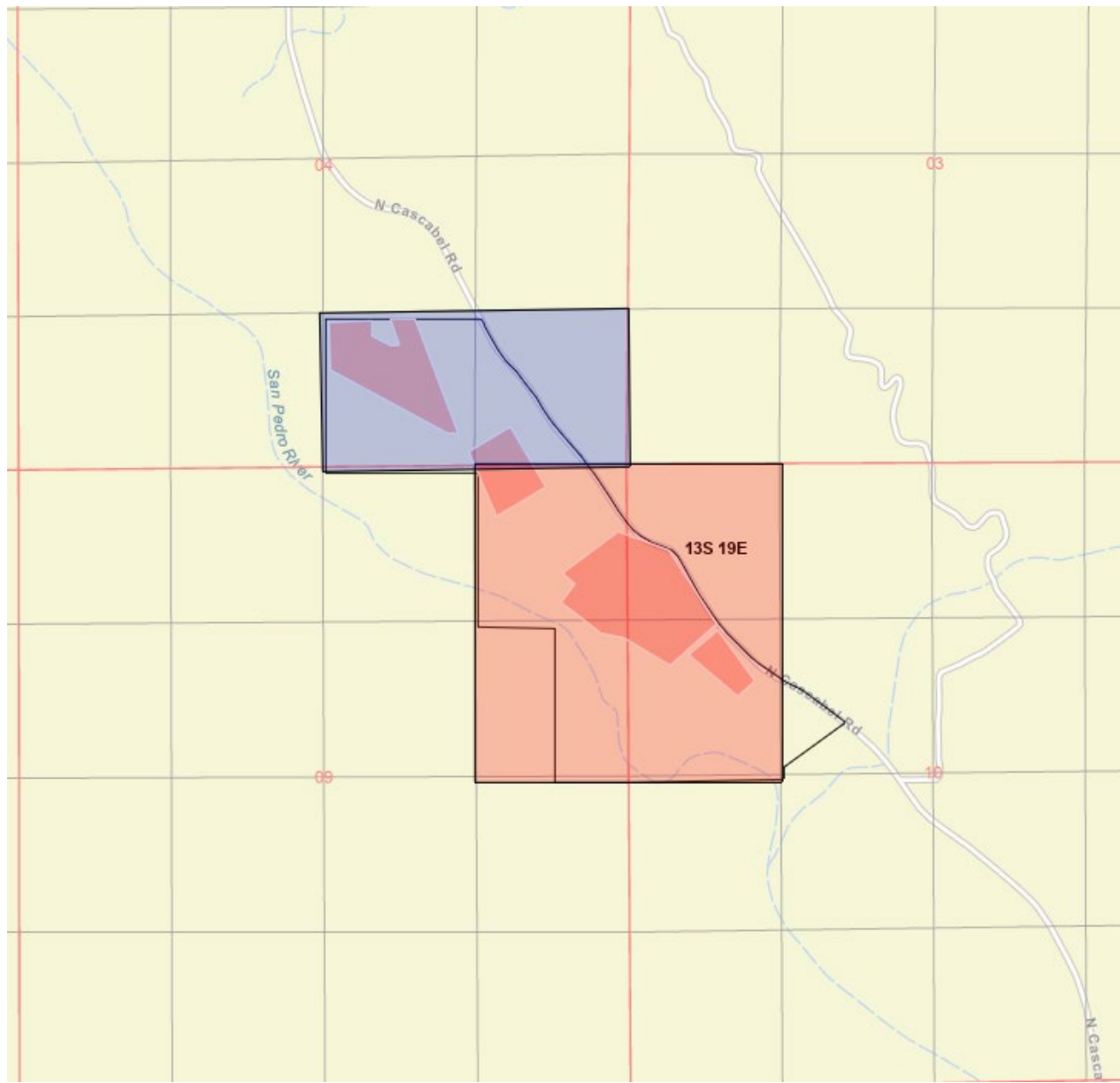


**LEGEND**





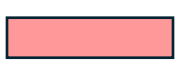


- Quarter/Quarter Section (40 acres)
- Section (160 acres)
- Township and Range
- WFR property boundary
- Area currently irrigated
- Area described in the Juan Sosa Homestead Patent
- Area described in the Jose Rodriguez Homestead Patent
- Area described in the Rosaura Soza Homestead Patent



**WFR 113-12-DBC-009**  
**(W1-11-2708)**



**LEGEND**

-  Quarter/Quarter Section (40 acres)
-  Section (160 acres)
-  Township and Range
-  WFR property boundary
-  Area currently irrigated
-  Area described in the Saenz Homestead Patent
-  Area described in the Wesseliche Homestead Patent

## Attachment A



### Court Connect Hearing Notice for In re Hope Iselin Jones & In re Norman G. and Barbara Y. Crawford

*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 video conference 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 Hope Iselin Jones & In re Norman G. and Barbara Y. Crawford

**Contested Case No.** W1-11-2697 & W1-11-2708

**Start Date/Time:** Wednesday, May 21, 2025, at 9:00 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](#)