

SUPERIOR COURT OF ARIZONA
MARICIPA COUNTY

January 7, 2025

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

S. Ortega
Deputy

In Re: Max J. Kartchner et al. II
Case No. W1-11-2212

FILED: January 10, 2025

In Re The General Adjudication of all
Rights to Use Water in the Gila River
System and Source

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

In Re: Initial Conference

MINUTE ENTRY

Courtroom: CCB 301

10:02 a.m. This is the time set for an initial conference.

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

- Mark Kartchner and Marion Kartchner, on behalf of Dragoon Ranch LLC
- Elon Hartman, representative on behalf of Mark and Marion Kartchner
- Merrill C. Godfrey for the Gila River Indian Community
- Laurel A. Herrmann for the San Carlos Apache Tribe
- Alexandra Corcoran observing for Susan Montgomery on behalf of the Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- Karen Nielsen for the Arizona Department of Water Resources (ADWR)
- Candace D. French for the Navajo Nation
- Kathryn M. Ust observing for SRP
- Denise Riden for Cochise County Attorney's Office
- Kaitlyn Smith for ASARCO

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

Discussion is held. The Kartchners confirm that they intend to pursue water rights at this time. The Court suggests that the landowners review the current statement of claimant and basis of right documentation to determine if anything should be amended, or if new documents should be filed, to reflect current water uses.

Discussion is held regarding the two parcels on the ranch. Mr. Hartman states that a legal description or the parcel numbers are needed to determine where the tanks are. There is discussion regarding the use of the public land survey system and that the tank locations are noted by section and range. Additional $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{4}$ subdivisions may be helpful.

The Court informs the landowners and representative that links will be included later in this minute entry for the purpose of obtaining the detailed objections. Information for the next meeting will also be included later in this minute entry.

For the reasons set forth on the record,

IT IS ORDERED that the landowners shall update the water rights information by **March 6, 2025**.

IT IS FURTHER ORDERED setting another virtual status conference on **March 6, 2025, at 10:00 a.m.** The status conference will be held using the Court Connect program. Instructions for Court Connect are attached as Attachment A. If you receive this Order by email, click on the red box “Join Court Connect Hearing” on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect.

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

Mr. Hartmann provides the Court with the following updated address for the Kartchners:

3040 N Bear Canyon Road
Tucson, AZ 85749

10:24 a.m. Hearing concludes.

LATER:

Arizona regulates surface water and groundwater differently. Surface water is governed by the doctrine of “prior appropriation”, which means that the first person to divert the water and put it to beneficial use has the senior right to that water. All subsequent water users have a junior right to the water and can only use the water as long as there is

enough to fulfill all the senior rights first. Groundwater is governed by the doctrine of “reasonable use.” A property owner may extract as much groundwater as can be reasonably used for a beneficial use.

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

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

To pursue water rights, a property owner must both file a Statement of Claimant, and present to the Court evidence of a legal right to the water they claimed on the Statement of Claimant. If the property owner proves to the Court the existence of a legal water right on their property, the Court will recognize enforceable water rights in a “Final Decree.” ARS § 45-257(B).

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

<https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-2212-Objections.pdf>

Parties wishing to move forward with historical water rights claims on their property must ensure Statement of Claimants are current and that documentation of the reason the claim to the water is legally valid, also known as the “basis of right,” is presented to the Court. Additionally, claimants must be able to document the use of the water had not been suspended for any period of five (5) successive years since the use began.

1) Statement of Claimants (SOCs)

A SOC is a landowner’s or lessee’s (“claimant’s”) written statement to the Court that provides details about their water right claim. This claim to use public water is filed with the Arizona Department of Water Resources (“ADWR”). Although a water right generally remains attached to the land, the SOC must reflect the current claimant’s name and contact information as well as any changes to the original claim.

To file a new SOC, update an SOC, make an SOC amendment, or obtain a SOC assignment from the original claimant. See Ariz. Rev. Stat. §§ 45-254. Forms may be found on ADWR's website at:

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

2) Basis of Right

To obtain a water right, a claimant must also provide a "basis of right." A basis of right is a document filed with ADWR either registering a water right, applying for a permit to appropriate water, or applying for a stockpond claim of right. See Arizona Revised Statutes ("Ariz. Rev. Stat.") §§ 45-182(A), 45-152(A), 45-273.

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

ADWR can help the current property owners determine if former Claimants properly registered the potential water rights claimed on the SOC's for this contested case. If a claimant either cannot prove that the water right claimed was initiated prior to June 12, 1919, or cannot present a statement of *claim* filed prior to August 22, 1991, the claimant must file either an "application for a permit to appropriate public water" or an "application for a stockpond claim of right." Ariz. Rev. Stat. §§ 45-152(A), 45-272(C).

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

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

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

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

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

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

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

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

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

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

No Recording Available

The Court has been informed that the audio and/or video recording for the Initial Conference held on January 7, 2025, before Special Water Master Sherri Zendri is not available. This minute entry will serve as notice that a transcript of the proceeding is unavailable. Good cause appearing,

IT IS ORDERED the parties in this matter may file an objection and reset the hearing within 10 days of the filing date of this minute entry. If no objection has been filed, this minute entry is affirmed.

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

Attachment A



Court Connect Hearing Notice for In re Max J. Kartchner et al. II

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

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

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

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

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

Case Name: In re Max J. Kartchner et al. II

Contested Case No. W1-11-2212

Start Date/Time: March 6, 2025, at 10:00 a.m.

JOIN COURT CONNECT HEARING

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

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

Dial-in Access Code: 688 970 203#

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

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