SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

April 17, 2025 CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

M. Pritchard

Deputy

In re Orie Alvin Owens, Sr. et al. (W1-11-2081)
In re Valley National Bank (W1-11-2089)
In re William and Esther Taylor (W1-11-2090)
In re Ruth B. Singer (W1-11-2111)
In re San Pedro Investments (W1-11-2119)
In re Robin L. and Linda M. Richey (W1-11-2128)

In re Norman G. and Barbara Y. Crawford (W1-11-2697)

In re Hope Iselin Jones (W1-11-2708)

FILED**:** May 1, 2025

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

In re: Oral Argument

MINUTE ENTRY

Courtroom: CCB 301

9:01 a.m. This is the time set for Oral Argument before Special Water Master, Sherri Zendri.

The following attorneys and parties appear virtually:

- Brian Heiserman, Brad Pew, David Brown, and Garrett Perkins on behalf of the St. David Irrigation District,[1] C-Spear LLC,[2] and Hartman Farms LLC.[3]
- John Burnside on behalf of the St. David Irrigation District (in all matters) and observing on behalf of BHP Copper (in the Jones and Crawford matters only)

[1] The St. David Irrigation District represents the claimants in W1-11-2081, W1-11-2089, W1-11-2090, W1-11-2111, W1-11-2119, and W1-11-2128.

[2] C-Spear LLC is the current landowner/claimant for W1-11-2697.

[3] Hartman Farms LLC, is the current landowner/claimant for W1-11-2708.

- Merrill Godfrey and Brette Pena on behalf of the Gila River Indian Community
- Bernardo Velasco, Alexander Ritchie, Joseph Sparks, Laurel Herrmann, and Jana Sutton on behalf of the San Carlos Apache Tribe
- Guss Guarino, Jared Crum, and Alexis Penalosa on behalf of the United States (US)
- Katrina Wilkinson on behalf of Salt River Project (SRP)
- Kevin Crestin and Eric Wilkins on behalf of the Arizona State Land Department (ASLD)
- Charles Cahoy observing on behalf of the City of Phoenix
- Rhett Billingsley on behalf of ASARCO LLC
- Jay Weiner observing on behalf of the Tonto Apache Nation
- Michael Pearce observing on behalf of the Buckeye Water Conservation District
- Jenny Winkler observing on behalf of the City of Chandler
- Karen Nielsen observing on behalf of ADWR
- Sue Montgomery on behalf of the Yavapai Apache Nation (in the Jones and Crawford matters only) and observing on behalf of the Pascua Yaqui Tribe (in all matters)
- Michael Carter observing on behalf of the Gila River Indian Community

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

The Court notes that the issues in all case being heard today are similar or overlapping and inquires if there are any concerns to hearing all cases together today.

There are no objections.

Gila River Indian Community Motions for Summary Judgement

The Court inquires of the Gila River Indian Community if a water right needs to be established before a transfer can be considered?

Mr. Godfrey opines that the Court would need to look at the initiation and perfection of the water right in the 1800s and the difference in use today with water being drawn from a well. The issue is how can a priority be put on a diversion from a well. A right is not independent from the point of diversion. The point of diversion, priority, and quantity are intertwined. It would not serve a purpose to separate the 1800s water right from the priority and quantity at the well today.

The Court asks for clarification of the term “legally available historically”.

Mr. Godfrey clarifies that if a water right is moved to a different point of diversion, it cannot be an expansion of several factors, including the availability of water. If the taking of water before the change in point of diversion was illegal, it cannot be transferred. It’s possible that none of the diversions would have been allowed if a priority system had been in place. The Claimants have not established that they were entitled to divert any water in

light of the superior downstream priorities. There must be a showing that the water was legally available, physically available, was actually diverted, and was actually consumptively used.

The Court inquires if the term "historical constraint" references the same concept.

Mr. Godfrey affirms.

The Court inquires of the St. David Irrigation District's understanding of the terms.

Mr. Heiserman clarifies that point of diversion is only one aspect of the right and is separate from the question of when the right was initiated, for which land, and for what quantity. He asks that the Court determine those issues now so that the change in point of diversion can be determined at trial. He believes that the underlying right must be addressed before any injury caused by the change in right can be determined.

The Court inquires if the position of St. David Irrigation District is that the underlying water can be determined separately from the point of diversion.

Mr. Heiserman affirms. The facts regarding the diversion have been presented and can be addressed at trial if disputed. The evaluation of the extent of the right is a separate issue from the evaluation of injury. The right was established without wells and will extend into the future for any future changes in diversion.

The Court inquires if Mr. Godfrey has any further comments on the issue of changes in diversion.

Mr. Godfrey argues that the point of diversion has to be established for a right, and the current points of diversion are the only points of diversion at issue, not the historical points of diversion. There has been a huge change in the amount of water used since the original dam was put in. The property owners should have to apply for a water right based on their usage today. On another point, the stipulations in the *Jones* and *Crawford* cases were not disclosed as a basis for the arguments in those cases and motions the Court *in limine* to exclude those stipulations.

The Court notes that the stipulations will be discussed later. The Court inquires if Mr. Heiserman has any further comments on the issue of changes in diversions.

Mr. Heiserman argues that Mr. Godfrey is conflating the initial establishment of the right with what happened later. The claimants will be limited to the extent of the right that is decreed, no matter what happened in later years.

United States Motions for Summary Judgement

The Court addresses the motions regarding the priority date. The Court inquires of the US if the Court is limited to a binary yes or no response?

Mr. Guarino states that claimants have claimed pre-1919 water rights for which they do not have the evidentiary basis to establish all the components of the right. The claimants need to seek a water right based on their current usage. So yes, a binary response would be warranted.

The Court inquires if Mr. Guarino's answer would be the same if the question was a movement of the date, assuming the claimants were able to meet the requirements.

Mr. Guarino affirms that that would be his answer, however, the claimants did not argue the Court's hypothetical question. The claimants have not been able to identify with specificity when irrigation started and which lands were irrigated.

The Court states that the *Pattersfield* case used the term "tract" of land and the *Gillespie* case used the term "parcel" of land. Can Mr. Guarino clarify?

Mr. Guarino states that it depends on the context of each case. Both terms are non-legal terms of general description. The Court has made it clear that claimants need to identify the particular acres of land.

The Court inquires of St. David Irrigation District their understanding of the terms "tract" and "parcel"?

Mr. Pew notes that he is also representing Hartman Farms and C-Spear LLC. He agrees that it depends on the context of each case. Water rights are particular to that piece of land (that property). He does not believe that the description needs to be as specific as US wants.

The Court inquires if they have a map of St. David Irrigation District that shows when the current property owners started withdrawing from the ditch and what land was being irrigated?

Mr. Pew states that he is not sure if there is a map that is that specific. The 1942 affidavit has specific legal descriptions of what lands were being irrigated since the 1900s, which should satisfy what is being asked for. The 1942 affidavit can be cross-referenced with the 1939 map. The 1916 or 1919 maps show which areas were being used for agriculture.

The Court notes that for Hartman Farms, they did not find anything for Mr. Sanez prior to 1885. However, the Court believes that 1879 was referenced. What documentation shows 1879?

Mr. Pew responds that Mr. Sanez had settled the land in February 1879 and began clearing the land and irrigating shortly thereafter. The land was surveyed in 1879 and mapped in 1880. If Court does not find that 1879 date is defensible, the Court can use the pre-1919 date that is most defensible and does not need to deny the claim outright. The Court is not limited to the earliest date claimed.

The Court addresses the issue of "relation back." The San Carlos Apache Tribe argued in their motion that "relation back" cannot be used globally and that each piece of property must establish their own priority date. St. David Irrigation District seemed to agree, however, there do not appear to be individual priority dates for each property.

Mr. Pew agrees that it is unknown when each property connected to the canal. However, the 1942 affidavit states that no later than 1900, the properties were irrigating with water from the San Pedro River. He argues that 1900 is a reasonable time frame after construction began in 1880 to relate back to the 1880 notice.

The Court inquires if anyone could connect to the canal and relate back to the 1880 date? The canal was finished about 1883. "Did these folks have anything to do with the creation of canal? Could somebody move in today, connect to the canal, and claim the 1880 priority date?"

Mr. Pew argues that no, someone could not claim the 1880 date today. The project as a whole was started in 1883 and was constructed with due diligence. Information was presented that these lands were brought into cultivation prior to 1919. The judgement and decree in *Clifford v. Larrieu* did not decree specific land. Only the fields that were brought into cultivation in connection with the canal project and within a reasonable time of completion of the canal can claim the 1880 date.

The Court inquires of SRP their view on application of the "relation back" doctrine.

Ms. Wilkinson states that the "relation back" doctrine will be key to determining if a pre-1919 right exists. The US did not address the "relation back" doctrine in their motion and is asking for judgment based on the lack of identifying a specific date of beneficial use. However, "relation back" does not require a pre-1919 date of beneficial use in order to relate back to the pre-1919 initiation. The US's motion did not address post 1919 beneficial use or whether that use demonstrated reasonable diligence. The US therefore is not entitled to judgment as a matter of law.

The Court asks the US for final comments.

Mr. Guarino argues that the *Hopi* decision states that specific tracts of land that are being irrigated need to be identified. The 1942 map does not tell Court anything about what was happening prior to 1919. The Court had decreed the project complete in 1885. The 1942 affidavit was made by people who did not own the land in question, nor who could prove any connection to 1879 original settlers. The 1928 map also only identifies agricultural land, not irrigated land.

The Court cautions that arguments regarding insufficient evidence may be more appropriate for trial.

Mr. Guarino clarifies that he only wishes to demonstrate that the evidence is not as clear and convincing as Mr. Pew suggests, it is only general evidence and does not identify the particular acres. In regard to the "relation back" doctrine: A person must properly post notice of intent to irrigate, but the right does not come into existence until the water is applied to land. Diligence does not apply to the development of canal; it only relates to the application of that water to land. The question is whether they developed the water right with reasonable diligence, or did they develop the canal with reasonable diligence. A specific date of when water was applied to land and which specific land needs to be identified, and has not been. Once this has been established, then "relation back" can be applied to get an earlier priority date. The claimants have not claimed any date after 1919.

The Court asks Mr. Pew for further comments.

Mr. Pew clarifies that they are not claiming that taking water out of canal today is sufficient for claiming pre-1919 priority date. Each property drawing water from the canal will need to prove pre-1919 irrigation. The standard of exact measurements of property that the US is asking for is not feasible and is not required. He believes that the water rights for these initial properties relate back to the 1879 notice. There are other properties in the St. David Irrigation District that will be litigated later that may not have a pre-1919 right.

The Court inquires if there are any further comments specifically relating to the Hartman Farms or St. David Irrigation District priority motions.

Mr. Pew argues that in regard to the Hartman Farms motion, there is specific evidence. They have a notice of water use and a map from that same year, as well as the 1888 homestead patent which states that over half of the acres were being irrigated. The 1921 maps mirror what water use is happening today. There is clear evidence that is tied to these specific parcels. In regard to the Jones matter, there is a survey from 1915 that shows that 80 acres were being irrigated out of the Sosa canal. In 1921, the State Water Commissioner found that 87.6 acres were being irrigated. Their expert believes that it is reasonable to assume that those are the same tracts.

The Court asks the Gila River Indian Community for their comments related to the priority date motions.

Mr. Godfrey opines that the argument that acreage specific evidence is not necessary is incorrect and would lower the standard of evidence. The Globe Equity Decree uses the 1920 State Water Commissioner maps as a basis for the location of the rights. The Decree, which was litigated in the 1920s and 1930s and was decreed in 1935, was administered with GIS precision based on those maps.

The Court asks the same of the San Carlos Apache Tribe.

Mr. Velasco states that *Southwest Cotton* is clear: reasonable diligence in one case could be a great lack of diligence in another. The Gillespie case states that for a water right to be given, it is necessary to know which piece of land is being irrigated and how much water is being used. St. David Irrigation District does not have any evidence of the quantity of water used when water was applied. This is sufficient to deny application of the "relation back" doctrine and to deny the underlying water right. Claiming that a different substantive standard is appropriate for old claims is not acceptable. It is unknowable what acres were being irrigated, when, or what quantity. Claimants cannot claim that the acres that they are seeking to irrigate today are the same acres that were irrigated pre-1919. Furthermore, the 1942 map is hearsay. It was written 17 years after the project was completed. There is no justification for the 17-year delay. No one knows when the laterals were connected to specific lands. Each landowner needs to prove reasonable diligence to use water after the canal was completed. The Court should deny the motion to apply "relation back" and find that "relation back' does not apply.

The Court asks Mr. Pew for further comments.

Mr. Pew would like to lodge an objection to Mr. Godfrey's comments related to the initiation of the right and not the evaluation of injury caused by the diversion. He also objects to the comments related to the Globe Equity Decree as this was not addressed in any filings and it is not appropriate to raise new arguments today. The Globe Equity Decree was a stipulation as to what lands were irrigated and when. Mr. Godfrey brought up the 1921 maps used GIS precision, yet they and others objected to those maps saying that they do not prove pre-1919 rights. Therefore, it is a double standard. St. David Irrigation District is not advocating for a different standard. They have very good evidence of pre-1919 use for all properties which is public record, not hearsay. The *Clifford* case did not limit water use to specific acres, just to what land was owned. A water right for the St. David canal exists. It was decreed in 1885 by the Arizona Territorial Court and was affirmed by the Arizona Territorial Supreme Court. The rights being claimed today fall within the rights in *Clifford v. Larrieu*. The 1942 affidavit specifies that they were irrigating with water from the canal. Mr. Pew does not believe that he needs to prove when the laterals were connected. He knows that the canal constructed with reasonable diligence and the lands were brought into cultivation at least by the early 1900s, although the homestead patent is evidence of earlier cultivation. They would request that the Court deny the US's motions and the objectors arguments about lack of pre-1919 water use.

10:27 a.m. Court stands at recess.

10:32 a.m. Court reconvenes with respective counsel and parties present.

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

San Carlos Apache Tribe Motions for Partial Summary Judgement

The Court addresses the San Carlos Apache Tribe. Starting with Case No. W1-11-2081, the tribe made comments that St. David Irrigation District was making claims on

their own behalf. Please clarify.

Mr. Velasco clarifies that this was included in the appendix to the SOC, but has subsequently been withdrawn.

The Court asks the San Carlos Apache Tribe to clarify their concerns regarding stock watering claims versus stock pond claims.

Mr. Velasco clarifies that both are defined separately by statute. There is no evidence of stock watering, therefore those claims should be denied, although it may have been withdrawn.

The Court asks for clarification regarding the other two cases. Is the Tribe implying that because the claimants have a 33 filing, therefore they are precluded from a 1919 right?

Ms. Sutton clarifies that the San Carlos Apache Tribe is not arguing a preclusion. The Tribe is arguing that Claimants do not have a pre-1919 right because the Claimants cannot draw the line between current usage and the usage demonstrated in the homestead documents.

The Court asks if the Claimants are clearly claiming more than what is on their "33" certification?

Ms. Sutton affirms.

The Court asks for clarification from St. David Irrigation District.

Mr. Pew clarifies that St. David Irrigation District is not asserting rights on behalf of the District itself. Only on behalf of the landowners (claimants).

The Court instructs the St. David Irrigation District to make sure that the SOCs reflect that position.

Mr. Pew confirms.

The Court inquires of the St. David Irrigation District position regarding claims made for stock watering versus stock pond watering.

Mr. Pew clarifies that the *de minimis* stock watering claims have not been withdrawn. The Claimants want to go through *de minimis* process and work with the other parties to resolve objections. The motion for summary judgment was filed the same day as the notice of intent to continuing working with the parties to resolve the *de minimis* claims. He believes that summary judgment is not appropriate for objections to the *de minimis* claims.

The Court states that the issue of the summary judgment and *de minimis* claim will

be addressed later. The Court inquires if Mr. Velasco has any additional comments on Case No. W1-11-2081.

Mr. Velasco argues that the claim is that the St. David community is one unified district. There is no line that they can draw between each claimant as the law would call for. Additionally, small use claims are to be tried at same time as larger claims in the same sub-watershed. Also, what has been claimed and described as stock pond watering is not stock pond watering as defined by the statute. As to the requested specificity, each claimant knows which land belongs to them, but do not have evidence of what land their predecessors used, nor how much water was used.

Ms. Sutton reiterates that there is no evidence of the quantity of water used. It is disputed whether the water was used for pasture versus alfalfa. There is no evidence of what water was used for in 1800s nor what amount. Ms. Sutton seeks clarification as to which domestic rights were the claimants were intending to withdraw?

Mr. Pew clarifies that domestic rights claims 001b and 001c have been withdrawn, claim 0001a is maintained

Court asks Mr. Pew for final comments regarding the other points.

Mr. Pew states that Mr. Velasco said that they have not drawn a line as it relates to "relation back." The documents demonstrate that it took a long time to bring land into cultivation. It was a very large project. The lands were brought into cultivation in a reasonable amount of time following completion of the project. As to the issue of the adjudication of small rights versus larger rights, he believes that nothing in law would require the *de minimis* process to not be followed. Regarding specificity, there is a fundamental disagreement about what the case law requires. The US is advocating for a standard that very few would be able to meet and is not supported by law.

Mr. Velasco argues that Mr. Pew is advocating the "most dangerous doctrine" described by *Southwest Cotton* in that reasonable diligence can be assumed if they use the argument "we're just poor farmers." They are attempting to shift the burden that is on claimants currently. Mr. Pew is also arguing that if very few people would be able to establish old water rights, that it would be somehow detrimental to the ordered system that is in place. However, the alternative is that it would allow people to cut in line. There is a clear substantive standard that must be met for a water right to be found.

Claimant's Motion for Partial Summary Judgement on Forfeiture and Abandonment

Mr. Burnside clarifies that the motion was filed jointly by all claimants in the *Jones* and *Crawford* cases and the St. David Irrigation District.

The Court asks Mr. Burnside to explain how Arizona water law generally "disfavors forfeiture?"

Mr. Burnside states that the application of clear and convincing evidence of forfeiture is a novel question as applied to water law. He is not aware of an Arizona case that specifically applies forfeiture to water law. Mr. Burnside finds it appropriate to convey forfeiture law specifically. It is appropriate to strictly apply forfeiture law in water cases. Many other states have issued rulings consistent with this argument. Forfeiture is defined as a divestiture of a property right without compensation to the property owner. A water right is a valuable part of a property right. Therefore, if forfeiture of a water right is found, that right should then be cancelled.

The Court points out that water starts as public right and is then granted to individuals which is different from land that is purchased.

Mr. Burnside argues that a water right is also a valuable vested property right that is not distinct.

Court inquires if it is a valuable property right, then shouldn't the onus be on the person trying to protect the right that they meet the requirements to have that right?

Mr. Burnside argues that the standard for forfeiture is not the same standard as acquiring a right.

The Court clarifies that we are talking about the standard to maintain a right. Under the Claimants' argument the Court would presume that a right was protected in absence of evidence that it is not protected. Yet, Arizona law favors water being put to beneficial use. Why should the Court make the assumption that the water right owner was protecting their right in absence of information to the contrary? Are they asking the Court to make an assumption of what the absence of information means?

Mr. Burnside argues that the burden of proof is on the objector to prove forfeiture and abandonment. That is the standard in every prior appropriation state that has addressed that issue.

The Court clarifies that they are not asking who needs to meet the burden of proof. The Court is asking where do we start when the representation is made.

Mr. Burnside argues that we start with the evidence provided by the objector claiming forfeiture or abandonment. There is a clear distinction between establishing a right and the proof required by an objector to prove abandonment. The absence of the right is not to be proved by the landowners.

The Court asks the US for comments on this issue.

Mr. Guarino states that here we are arguing whether a water right exists and was it continuously used after coming into existence. Therefore it is pertinent whether periods of non-use qualify for forfeiture and abandonment. The claimants need to prove continuous water use. The burden of proof is the same as in a civil case - preponderance of the

evidence, and not clear and convincing evidence. Identifying that a water right that was established was thereafter not used is not a stripping of a property right, it is simply saying that the water was not used properly and therefore the was cancelled. A claimant can thereafter apply to get the water right back.

The Court addresses the comment from either the US or San Carlos that stated that we cannot talk about forfeiture if the water right has not yet established. In that case, does the disfavor of forfeiture still apply?

Mr. Burnside affirms that it does apply. It is appropriate to address forfeiture issue – but the objectors have not provided evidence of their claim of forfeiture and abandonment. We do not need to wait for right to be established to address claims of forfeiture. It will be handled in same proceeding.

Ms. Sutton agrees with US that the standard is preponderance of evidence. Arizona water law does not favor or disfavor forfeiture. Arizona water law prefers that water is put to beneficial use. The experts have looked at the only available data points. Assuming that the claimants can establish their claims in the first instance, it can be addressed at trial whether the rights have been forfeited in part or in whole in the meantime.

The Court states that St. David appears to think that the objectors are asking for an unreasonable amount of evidence to establish the right. However, is St. David not asking for the same "unreasonable" amount of evidence to prove that the right has not been maintained?

Mr. Burnside reiterates that Arizona law disfavors forfeiture. Those statutes should be strictly construed, which call for clear and convincing evidence that the right has not been maintained. Establishing a right is a different legal situation than divesting a right without compensation. There is a different set of principles with respect to proof to apply to establish a right than when taking away a right.

The Court inquires how a right can be taken away if the right hasn't been given yet?

Mr. Burnside believes that the right will be established and will be given at trial, then the objectors may argue at that same trial that that right was abandoned. The right was vested at the time it was appropriated. They will be seeking at trial recognition of a right that had already been vested. Therefore the alleged forfeiture and abandonment can be addressed at the same procedure.

The Court inquires if Mr. Burnside has any further comments.

Mr. Burnside addresses clear and convincing evidence versus preponderance of the evidence. He believes whichever standard the court applies; the objectors have failed to meet their burden to provide evidence of forfeiture and abandonment. The expert's opinion of the aerial photos is insufficient. The objectors cannot meet burden by either standard. They request that the Court enter partial summary judgment on forfeiture and abandonment

as a result.

The Court asks Mr. Guarino for further comments.

Mr. Guarino addresses clear and convincing evidence versus preponderance of the evidence. There is an issue of material fact that will need to go to trial if it cannot be resolved beforehand. Their argument that there is no evidence of non-continuous use is false. There is very good evidence that demonstrates non-use. The expert, Mr. Ley, is an engineer and not an expert in socioeconomic conditions. He can only identify what was happening in aerial photos, and not what was happening in between. The argument that the motion raises an undisputed issue of fact is incorrect.

The Court asks Ms. Sutton for further comments.

Ms. Sutton states that the San Carlos Apache Tribe joins in the US's arguments.

Claimant's Motion for Partial Summary Judgement on Water Duties

The Court addresses the issue of water duties. The Court asks if the reason that the claims have been focused on irrigated acres rather than the amount of water is because the claimants plan to use the water duties multiplied by the irrigated acres to determine the quantity?

Mr. Heiserman affirms.

The Court inquires if these stipulations arise from the 1675 case? Were they ever applied in that case?

Mr. Heiserman clarifies that the stipulation is in phase 2 now, which means that this is the first opportunity to apply those stipulations.

The Court asks for his understanding of how these water duties were going to be applied moving forward in the St. David cases.

Mr. Heiserman states that the language of the stipulation is clear on the process and methodology for calculating the water duties. Part two of the stipulation states that 9 is the amount agreed upon.

The Court states that the particular math equation was not included in their claims. There were presumptions that this was how the numbers were to be used. However, it does make sense as it pertains to the original question proposed by Water Master Harris. The Court asks for clarification if 9 acre-feet/year was the amount agreed upon, why are they now asking for a lower number?

Mr. Heiserman clarifies that the streamflow gauge data was compared to the

historical pre-1919 data. The 9 acre-foot water duty, multiplied by the acres that they believe existed for the entire district, indicate that that amount of streamflow was not available some years even when the stream was not significantly impacted by upstream diverters. They felt it appropriate to conform their claims to this gauge data. However, the stipulation is binding if the other parties do not agree to 5.6 acre-feet. The Claimants changed their claims on the assumption that other parties would be ok with the lower number. However, if they do not agree, then the Court should use 9 acre-feet.

The Court inquires of Mr. Guarino what was your understanding of the stipulation?

Mr. Guarino states that he was not involved at the time of stipulation and defers to Mr. Godfrey.

Mr. Godfrey states that he was also not present at the negotiation of the stipulation. However, the stipulation has to be interpreted according to its terms. It says that the right holder (paragraph 18 of the methodology stipulation) has this maximum of what they are entitled to withdraw. It presumes that a right had been granted and sets the maximum amount that can be withdrawn. At the time, ADWR had provided water duty information to the Court, based on recent irrigation that they had investigated, about what beneficial use was happening on the properties. This quantified the maximum that a water right holder is legally entitled to divert or withdraw. This did not determine an attribute of a water right because this cannot be determined until other attributes are determined; i.e. priority date and point of diversion. If you have to show no injury at the point of diversion then that bears directly on how much beneficial use there was before the change in point of diversion occurred. The claimants are trying to quantify a water right with a stipulation that doesn't say that the water right is quantified that way. He was not trying to apply this methodology to any particular case to quantify the right.

The Court clarifies that the question before Mr. Godfrey was only his understanding of the agreement. The agreement says one of the issues that this agreement was meant to answer was "the correct methodology to determine the amount of water and quantity used for irrigation" (the Court notes the past tense) as stated in paragraph 11, page 3 of the July 2020 stipulation. The document says that these values were to be applied to what was done in the past. If that is not the understanding of the parties who signed the agreement, this can be discussed.

Mr. Godfrey states that yes, the Gila River Indian Community has a different understanding. The document shows what the maximum water use would be if the property already had water right.

Court clarifies that Mr. Godfrey's understanding is that the water duty amount was **not** meant to determine the methodology that was to be used to determine the quantity used in the past.

Mr. Godfrey affirms. In the second [September 2020] stipulation, paragraph 6, it says that various aspects of the methodology were agreed upon for the calculation of water

duties, however, other steps in the calculation were left unresolved. An agreement was not reached about how to quantify water rights.

The Court inquires what does that number in the second stipulation mean to you if not applied to the past?

Mr. Godfrey states that the number does not entitle anyone to any particular quantity for any particular point of diversion. It only shows the maximum amount that can be withdrawn once a water right is established.

The Court inquires if you need an amount to establish right, why do you need this stipulation?

Mr. Godfrey states that rather than seeking change in point of diversion, they could use this amount that quantifies irrigation use on these properties, unless other restraints are shown. He notes that this stipulation only applies to St. Davis, not Jones or Crawford.

The Court reiterates their question.

Mr. Godfrey states that the stipulation sets a cap on what current diversions can use once the right is established.

The Court inquires of the San Carlos Apache tribe what their understanding of the stipulation is.

Ms. Hermann, although she was also not at the negotiations, states that they have the same understanding as Mr. Godfrey. It is the maximum for people who had been granted a right.

Mr. Guarino agrees with Mr. Godfrey. He understood that 9 was the current use and not meant to be used for anything else. The number was not to be used for all purposes and all times.

The Court asks if anyone is on the call that was present and a part of stipulation negotiation?

Ms. Wilkinson states that [her colleague] Mr. McGinnis was present. The intent of the stipulation was clear, as shown in paragraph 18 of the quantification and methodology stipulation and SRP's reply in support of their joinder to the St. David motion, on footnote 3 of page 6.
Parties agreed that the quantity that would apply to the acres that had applied water with reasonable diligence would be 9 acre feet per acre.

Mr. Brown states that he was there. Ms. Wilkinson is correct.

Mr. Crestin states that he was also there. Ms. Wilkinson is correct.

Mr. Sparks states that he was also there. His understanding was that for a water right to be established, for a diversion from the river by ditch or canal, that 9 would be the maximum they would be entitled to for a diversion right. However, each water right would need to take water in priority order. Therefore this amount could be sustained by some early claimers, but not all claimers. Furthermore, this was not intended for diversion by wells. It was a guide to what was possible in the realm of diversion from the river, but not application.

The Court asks Mr. Heiserman for comments.

Mr. Heiserman disagrees with Mr. Sparks. The stipulations relate to diversions or withdrawals and expressly relates to wells. This was a quantification procedure. The Court's question was not what is the maximum, it was, what is the amount. The problem that the negotiations set out to solve was "how do we quantify these rights?" The [September 2020] water duty stipulation states in paragraph 11 "resolves all aspects of the irrigation quantification issue." The questions being raised by the parties today are not consistent with that language. The maximum that the stipulation refers to is in regard to there being years you would not use that amount, but that amount is the entitlement.

The Court asks if Mr. Brown has further comments.

Mr. Brown agrees with Mr. Heiserman.

Mr. Godfrey argues that this issue was framed by the St. David Irrigation District in their proposal to the Court before notice was given to the Gila River Indian Community. The Special Master [Harris] went ahead with those issues without objection. There shouldn't be great reliance on how the issue was framed because it wasn't framed as quantification of a water right by the Court and the stipulation did not resolve that issue.

Mr. Heiserman adds that that is how it was framed by the parties in the language of the stipulation. It resolved the irrigation quantification issue as stated by the Gila River Indian Community.

Mr. Billingsley adds that ASARCO was involved in the drafting of the stipulations. Their understanding is the same as Ms. Wilkinson, Mr. Brown, and Mr. Heiserman. They understood that this was the methodology that would be used for the St. David Irrigation District, as well as applied to other future cases.

The Court addresses the issue of the proposed site visit. The Court believes it is not cost effective. If the parties provide an agreed upon list of places, the Court is happy to visit by herself to avoid *ex parte* communication and keep costs down. Otherwise, the Court would not do a site visit.

Mr. Heiserman states that they will try to reach an agreement with the other parties.

The Court addresses the issue of *de minimis* and the schedule with respect to *de*

minimis.

Mr. Heiserman proposes a separate track from trial, depending on whether the Court wants to resolve the *de minimis* issue before trial.

The Court has no preference.

Mr. Heiserman states that they will formally withdraw abstracts and let parties know which abstracts still remain. They will meet with the other parties and gather comments on the abstracts. The comments can then be incorporated, unless they are global objections to the *de minimis* process, in which case the objection would need to be resolved by the Court. He proposes that next week they send an email with what is still being claimed. He would then schedule a meeting in mid-May to receive comments. They would then make any changes and after the Jones and Crawford trial would let the Court know where they stand.

The Court asks for a date for a status report.

Mr. Heiserman proposes June 18, 2025.

The Court asks for objections?

No objections are made.

Mr. Velasco inquires what is the Court's ruling on the Tribe's motion with respect to the *de minimis* claims?

The Court is not making an express order on that issue now. The Court is aware that it is an open question. All 13 motions are being taken under advisement. The Court will issue rulings separately on each motion. Any further questions or concerns?

Mr. Guarino asks if there will be a status conference leading up to the June 2 trial to determine the length of trial and other conditions of the trial.

The Court states that they may schedule a status conference based on what the Court rules. The pre-trial conference would be on or around May 15, 2025, if there is a need for such a conference.

There are no further comments.

Based on the matter presented,

IT IS ORDERED taking all matters under advisement.

IT IS FURTHER ORDERED that the parties shall submit a joint status report no later than June 18, 2025.

12:05 p.m. Matter concludes.

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