

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

4/15/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

L. Stogsdill
Deputy

In re: Albert S. Duff III
Contested Case No. W1-11-2731

FILED: 4/27/2021

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: Order to Show Cause

MINUTE ENTRY

CCB – Courtroom 301

3:00 p.m. This is the time set for a telephonic Order to Show Cause Hearing before Special Water Master Susan Ward Harris.

The following attorneys appear telephonically: Sybil Erden appears on her own behalf and on behalf of Jeffrey Robins; Kimberly R. Parks on behalf of ADWR; John Burnside on behalf of BHP Copper; Joe Sparks and Laurel A. Herrmann on behalf of the San Carlos Apache Tribe; Michael Foy and Mark McGinnis on behalf of Salt River Project (“SRP”); Richard Palmer on behalf of the Tonto Apache Tribe; Rhett Billingsley on behalf of ASARCO and Susan Montgomery on behalf of the Yavapai Apache Nation and observing on behalf of the Pascua Yaqui Tribe.

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

Ms. Erden claims domestic water rights for 1-acre foot. The Court suggests that the claim be adjudicated as a *de minimis* water right assuming that a legal basis can be established.

Mr. Foy, who had not yet received a copy of the filing made by Ms. Erden, says that the question is whether Ms. Erden claims a right to withdraw water from a well in the subflow zone with a priority date post-1919. He suggests if that is the case, then this case should wait until there is a ruling in the Town of Huachuca City matter. He said that if the claim is for a pre-1919 priority date, then the case should proceed under the *de minimis* procedures.

Mr. Burnside agrees with Mr. Foy that it would be appropriate to stay the case until a decision is made in *In re Town of Huachuca City*.

The Court explains that *In re Town of Huachuca City* involves claims for water from wells that are located in the subflow zone, which, very generally, is an area along a river. In that case, the landowners began using water after 1919 and did not file for surface water rights believing that the well was pumping groundwater. One of the issue that is being decided in *In re Town of Huachuca City* is whether the court has the power to decree an appropriative water right for a claimant who began withdrawing water from a well located in the subflow zone after June 12, 1919, but did not comply with the Arizona Surface Water Code.

The Court inquires if Ms. Erden provided copies of her SOC to all parties, since counsel did not recall receiving it. She advises that she did not send copies to all parties as she was not aware she was required to do so.

The Court refers Ms. Erden to the July 27, 2020 Order of the Court which contains the parties addresses. Ms. Erden will send the SOC with all attachments to the parties on the list. She was advised to contact ADWR with any questions she may have about filings necessary for water rights.

For the reasons stated on the record,

IT IS ORDERED staying this proceeding until decision is made in *In re Town of Huachuca City*. The Court will take no further action on the claims filed by Ms. Erden until a decision is issued in *In re Town of Huachuca*. Any party may move to lift the stay at any time to move forward with a determination of the claimed water rights.

Matter concludes: 2:47 p.m.

A copy of this order is mailed to all parties listed on the Court approved mailing list for Contested Case Number W1-11-2731.