

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

April 17, 2023

CLERK OF THE COURT

HONORABLE SCOTT BLANEY

T. DeRaddo
Deputy

In re: Reporting of Diversion
Information and Other Objections
(Silver Creek Watershed)
Contested Case No: **CV6417-33-9005**

In re the General Adjudication of
All Water Rights to Use Water in the
Little Colorado River System and Source

FILED: 4/18/2023

MINUTE ENTRY

On August 23, 2022, the Final Report of the Special Master on Summary Proceedings in the Silver Creek Watershed (“Report”) was issued and copies were provided to all parties on the court-approved mailing list for the case. The Report set a deadline of February 20, 2023 for written objections to be filed to the Report. The Report recommends the implementation of summary procedures to adjudicate claims for stock and wildlife watering, stockponds with a surface area of not more than two acres, and all stockponds in The Sinks, Long Lake, and White Lakes basins. The United States, joined by the Navajo Nation, filed a set of comments. Arizona Department of Water Resources (“ADWR”) also filed comments. Salt River Project (“SRP”) timely filed objections. THE COURT FINDS that all four documents generally support the findings of fact and conclusions of law included in the Report with several suggested modifications.

Stockwatering and Stockpond Facilities

Arizona Department of Water Resources, citing to A.R.S. §§ 45-251(9) and (10), suggested changes that affect the definitions of stockponds and

stockwatering so that water used in artificial facilities such as drinkers or troughs will be treated as a stockwatering rather than as a stockpond use.

IT IS ORDERED Conclusions of Law 15 and 16 are approved as modified:

Conclusion of Law No. 15. A stock and wildlife watering (SW) beneficial use will be adjudicated for unimproved instream watering, improved instream watering, and watering from a small facility, other than a stockpond, that is used solely by stock and wildlife.

Conclusion of Law No. 16. A stockpond (SP) beneficial use will be adjudicated for a pond or impoundment having a capacity of not more than 15 acre-feet that is used solely for stock and wildlife.

Legal Descriptions

Arizona Department of Water Resources and the United States expressed concern that the use of legal descriptions that locate attributes of stockponds and stockwatering uses within a 10 or 40 acre area, as currently used in the Silver Creek HSR, is insufficiently precise and could lead to issues in the future. Arizona Department of Water Resources represented that its mapping capabilities have significantly improved since the issuance of the Silver Creek HSR and that it is likely that it will acquire precise location information for most, if not all, stockwatering, wildlife watering, and stockponds. As a result, ADWR stated that legal descriptions that they will provide for use in the abstracts should not be limited to the nearest quarter-quarter sections. Given the importance of precision in defining the attributes of a water right and ADWR's representations,

IT IS ORDERED Conclusions of Law Nos. 21 and 22 will be approved as modified:

Conclusion of Law No. 21. For wildlife and stockwatering uses, the place of use will be described to at least the quarter-quarter section in which the use occurs. In cases of two or more stockwatering uses or two or more wildlife uses within the same quarter-quarter section, the rights will be adjudicated to at least the nearest quarter-quarter-quarter section.

Conclusion of Law No. 22. For stockponds, the quarter-quarter sections in which the surface area of the stockponds are located will be utilized for the legal description for the place of use and point of diversion unless more precise location information is reasonably and readily available to Arizona Department of Resources, in which case such information shall be used to identify the location of

the place of use and the point of diversion. In the case of two stockponds in the same quarter-quarter section, each stockpond will be located to at least the nearest quarter-quarter-quarter section.

The Salt River Project (“SRP”) filed an objection to the Report. It seeks a clarification that filings under the 1974 Water Rights Registration Act and the 1977 Stockpond Registration Act do not create a proper legal basis for a water right in all situations. The Report was not intended to and does not provide a comprehensive analysis of each type of legal basis for a water right and its requisite elements. The Report should be understood as providing a general list of possible legal bases for rights, which should not create confusion in the future. Similarly, this order should not be construed as approval of, or a ruling on, the elements or requisite showing needed to establish any particular legal basis for a water right.

The Salt River Project also sought assurance that the methodology used to analyze and quantify water availability and the factors used in the cost benefit analysis were not the exclusive methodology and factors to be used in future *de minimis* proceedings in other watersheds. The Court is cognizant that the adoption of *de minimis* proceedings must be based on the facts and circumstances appropriate to each watershed. The methodologies and factors used in the *de minimis* analysis in the Silver Creek Watershed were appropriate. Finally, SRP raised a question about the requirement that water rights for *de minimis* uses that are summarily adjudicated under the procedures set forth in the Final Report must be supported by a Statement of Claimant and a proper legal basis. Salt River Project interprets the Report as limiting summary adjudication to only those instances where ADWR has listed a Statement of Claimant and located documentation that provides a legal basis for the proposed water right in the Watershed File Report. The Report should not be read to prohibit the use of summary proceedings in cases whether ADWR either did not list a Statement of Claimant or documentation showing a proper legal basis in the WFR but the Claimant is able to produce a Statement of Claimant or documentation of a proper legal basis satisfactory to the Special Master.

IT IS ORDERED, the findings of fact, the conclusions of law, and procedures set forth in the Report except as explicitly modified herein are adopted as an order of this Court.

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