

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

5/25/2021

CLERK OF THE COURT

HONORABLE MARK H. BRAIN

A. Parmar
Deputy

FILED: May 28, 2021

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

In Re: Lower Little Colorado River Subwatershed
Civil No. CV6417-400

MINUTE ENTRY

Arizona Department of Water Resources (“ADWR”) prepared a Technical Report in July 2019 (“ADWR Report”) about its investigation of stock and wildlife watering and stockponds in the Lower Little Colorado River subwatershed (“LLCR”). It analyzed the amount of water consumed by those uses compared to the quantity of surface water available. The investigation did not include uses that relied on wells for a water supply. The Arizona Department of Water Resources provided notice of the ADWR Report to all persons on the court-approved mailing list for the Little Colorado River (“LCR”) Adjudication, persons who filed a claim for a water right in the LCR Adjudication and persons believed to be using water for stockponds, stockwatering or wildlife purposes in the LLCR subwatershed. Thirty-five claimants filed objections to and provided comments about the ADWR Report. Following a status conference and a scheduling conference to address the objections and comments, the parties in attendance agreed that ADWR had provided sufficient information on which to base a decision about whether stockponds and stock and wildlife watering uses are *de minimis* uses in the LLCR subwatershed and whether summary procedures should be implemented to adjudicate those uses.

On October 30, 2020, the Report of the Special Master on Summary Proceedings in the Lower Little Colorado Subwatershed (“Report”) was filed and copies provided to all parties on the court-approved mailing list for the case, which included all parties who had filed objections to the ADWR Report. The Report recommends the implementation of

summary procedures to adjudicate claims for stock and wildlife watering and for stockponds having a capacity of not more than 15 acre feet of water. Several parties filed comments and recommendation by the conclusion of the objection period in April 2021. One claimant, the Salt River Project (“SRP”), filed an objection to the Report. Salt River Project contends that the language in the Report that identifies an example of possible legal basis for a water right, while correct, could create confusion in the future because the Report does not also contain a discussion of all of the elements that must be proven to establish that legal basis. 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.

Salt River Project also filed its recommendation that the claims for *de minimis* water uses along with proposed abstracts should be the subject of a separate section of the hydrographic survey report to be prepared by ADWR for the LLCR subwatershed. In other words, SRP proposes that ADWR should separate the watershed file reports for the *de minimis* and non-*de minimis* water uses. The LCR Coalition joined by the Navajo Nation and the Arizona State Land Department also recommended that ADWR create a separate section in the HSR that would contain the results of its investigation of the *de minimis* uses and provide proposed abstracts setting forth the attributes for each potential water right. These recommendations appear to have a great deal of validity. The Special Master is instructed to schedule a meeting with ADWR to discuss the recommendations proposed by the parties and to issue a decision about the format of the HSR taking into account the recommendations made by the parties and the information provided by ADWR.

The findings of fact, conclusions of law, and procedures set forth in the Report 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.