

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

November 17, 2022

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER  
SUSAN HARRIS

M. Pritchard

Deputy

In re: Robert S. & Judi MacNeil  
Contested Case No. W1-11-1214

FILED: November 29, 2022

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: Status Conference

**MINUTE ENTRY**

**Courtroom: CCB 301**

1:45 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris.

The following attorneys and parties appear telephonically:

- Kimberly Parks and Kome Akpolo for the Arizona Department of Water Resources (“ADWR”)
- Thomas Murphy for the Gila River Indian Community
- Richard Palmer for the Tonto Apache Tribe
- Susan Montgomery for the Yavapai Apache Nation (and observing for the Pascua Yaquai Tribe)
- Karl Schmitt for the Karl Schmitt and Patrick Dome Living Trust
- Mark McGinnis for Salt River Project (“SRP”)
- Joseph Sparks for the San Carlos Apache Tribe
- Charmayne Staloff and Laura Boyer for the United States Indian Resources Section
- David Gehlert and Maggie Woodward for the United States Proprietary Agencies
- J. Albert Brown observing for Brown and Brown Law Offices
- John Burnside observing for BHP Copper
- Christina Jovanovic and Bradley Pew observing for ASARCO

Representatives of the Estate of Robert McNeil have not made an appearance today.

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

The United States has filed a Notice of Appearance and request to be added to the mailing list.

**IT IS ORDERED** granting the request.

The Court inquires of Mr. Schmitt whether he intends to make a claim for a water right?

Mr. Schmitt affirms and states that he has submitted a Statement of Claimant to ADWR at the time that he registered the well in question, in December 2008. Well #55-215896 was drilled in May 2007.

Court inquires of Mr. Schmitt whether he claimed a priority date in the Statement of Claimant?

Mr. Schmitt does not recall.

The Court explains the process moving forward. The Court will attempt to locate Mr. Schmitt's Statement of Claimant. Based on the priority date included in the Statement of Claimant, ADWR may need to investigate the claim. A Status Conference will be set in 30 days to discuss the claim and the priority date.

Mr. Schmitt adds that the original property was split and parts sold. The well drilled in 1950 was part of the property sold to Pam Drake. He believes that Bob Dollard and Pam Drake may need to be a part of this litigation. They own Parcel 104-42-007C.

Based on the discussion and for reasons stated on the record, Bob Dollard and Pam Drake shall be provided a courtesy copy of this minute entry and a determination will be made about whether they should be added to mailing list.

Information about the University of Arizona water law clinic shall be included in the Minute Entry.

There are no further comments.

1:55 p.m. Matter concludes.

## **LATER:**

This case involves a claim for water claimed by Robert McNeil in the northeast quarter of the northeast quarter of Section 28 T 23S R 22E. The claimant asserted a right to use water on the SENENE Section 28 T23S R22E and Arizona Department of Water Resources investigated and found uses on land it found to be owned by Robert McNeil in the SWNE and the SENWNE Section 28 T23S R22E. Thus, the only claims for water use that will be adjudicated in this contested case concern that water used on land previously owned by Robert McNeil and that was the subject of the investigation by Arizona Department of Water Resources in the north half of the northeast quarter of Section 28 T23S R22E.

### **Karl F. Schmitt and Patrick Dome**

Karl F. Schmitt and Patrick Dome filed Statement of Claimant 39-17528 claiming a right to water for domestic use on tax parcel 104 42 008D. This property is located in the northwest quarter of the northeast quarter of the northeast quarter of section 28 Township 23E Range 22 S. The source of the water reported is a well, registration no. 55-215896. The claimed priority date is October 21, 2007.

Karl F. Schmitt and Patrick Dome also filed Statement of Claimant 39-17527 claiming a right to water for domestic use on tax parcels 104 42 009 D and 104 42 009E. The source of water reported is a well, registration number 55-546772. The claimed priority date is December 10, 1994. In addition, the trustees of the Karl Schmitt and Patrick Dome Living Trust filed Statement of Claimant 39-18007 claiming a right to water for domestic use on tax parcel 104 42 009C. The source water reported is a well, registration no. 55-538145. The claimed priority date is August 17, 1993.

According to the interactive map publicly available on the website maintained by Arizona Department of Water Resources, each well identified by Karl F. Schmitt and Patrick Dome is located within the subflow zone. Wells located in the subflow zone are presumed to be pumping appropriable water.

The priority date listed in each Statement of Claimant occurred after the issuance of the investigations performed by Arizona Department of Water Resources of water claims and uses that are currently at issue in this adjudication. Accordingly, the Statements of Claimant filed by Karl F. Schmitt and Patrick Dome will be the subject of the San Pedro River HSR II that the Arizona Department of Water Resources will prepare. No further action will be taken in this contested case on the claims for rights for water claimed by Karl Schmitt and Patrick Dome or their trust.

During the course of the preparation of San Pedro River HSR II, Arizona Department of Water Resources will review the Statements of Claimant filed by Karl F. Schmitt and Patrick Dome, individually and as trustees, review its records regarding documents that may establish a legal basis for the water rights, investigate the water uses, and prepare a report that will be distributed to water users in the watershed. Claimants may file objections to the report that will be considered along with the claims in the adjudication of the cases included in San Pedro HSR II.

The Natural Resource Use and Management Clinic, a law clinic at the University of Arizona, may be a resource for claimants. The director of the law clinic is Priya Sundareshan. Claimants can contact Ms. Sundareshan at [priyaz@email.arizona.edu](mailto:priyaz@email.arizona.edu). More information about the Clinic can be found at <https://law.arizona.edu/clinics/natural-resource-use-management-clinic>

### **Dollard and Drake Living Trust**

Mr. Schmitt raised the possibility that the trustees of the Dollard and Drake Living Trust should be included in this contested case due to their ownership of tax parcel 104 42 007C. Bob Dollard and Pam Drake filed Statement of Claimant 39-15402 on March 30, 2004 for domestic water use on land which they described as located in the SWSWNE Section 28 T23S R22E that they referenced as tax parcel 104 42 007C. The Statement of Claimant does not contain a priority date. To confirm whether Mr. Dollard and Ms. Drake should be included in this contested case because the land titled in their names was part of the land originally investigated by Arizona Department of Water Resources,

**IT IS ORDERED** that Arizona Department of Water Resources shall file a map of the land investigated as part of Watershed File Report No. 111-24-085 that shows the tax parcels located within the boundaries of the investigated land. The map shall be filed by **January 9, 2023**.

A copy of this order is mailed to all persons listed on the Court-approved mailing list and a courtesy copy of this minute entry shall be mailed to the trustees of the Dollard and Drake Living Trust.