

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

April 3, 2024

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SHERRI ZENDRI

M. Pritchard

Deputy

In re: Chester C. Antonick
Contested Case No. W1-11-1508

FILED: April 8, 2024

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: Initial Status Conference

MINUTE ENTRY

Courtroom: CCB 301

10:00 a.m. This is the time set for an Initial Status Conference before Special Water Master, Sherri Zendri.

The following attorneys and parties appear virtually:

- Doreen Edwards
- Eileen M. Brien
- Kevin T. & Michelle M. Rasch
- Amber Marie Parker
- Wayne & Heather Cantrell
- Michael J. Mason & Emma Huang
- Mark McGinnis on behalf of Salt River Project (“SRP”)
- Laurel Herrmann observing on behalf of the San Carlos Apache Tribe
- Yosef Negose on behalf of the United States
- Alexa Penalosa on behalf of the United States Proprietary Interests
- Merrill Godfrey on behalf of the Gila River Indian Community
- Kent Millward on behalf of the Tonto Apache Tribe
- Sue Montgomery on behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaquai Tribe)
- Rhett Billingsley on behalf of ASARCO, LLC

- Kimberly Parks and Karen Nielsen on behalf of the Arizona Department of Water Resources (“ADWR”)
- John Burnside on behalf of BHP Copper
- Katya Lancero observing on behalf of the Yavapai Nation
- Andrew Abernathy observing as an interested party

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

John Burnside makes an oral request for BHP Copper to be added to the mailing list.

IT IS ORDERED granting the request and adding BHP Copper to the Court-approved mailing list.

The Court inquires which property owners intend to pursue a potential water right? The following parties affirm their intent:

- Doreen Edwards
- Eileen M. Brien
- Kevin T. & Michelle M. Rasch
- Amber Marie Parker
- Wayne & Heather Cantrell
- Michael J. Mason & Emma Huang

The Court explains the process and what preliminary documents need to be filed with ADWR.

Discussion is held regarding the registration of a well not currently in use, but for which use is planned in the future.

The parties shall work with ADWR to register the well as appropriate.

Discussion is held regarding the importance of the differences in use between surface water and ground water to this litigation.

Discussion is held regarding whether having or not having a well on the property is related to getting water rights.

The Court explains that property owners do not necessarily need a well on their property to have a potential water right because the owner of the original (larger) parcel of land made a claim for a water right for the entire property in the 1980s.

The property owners provide their contact information to be included in this minute entry so that they may communicate with each other about how they would like to proceed.

The Court will set a Status Conference in approximately 60 days regarding the status of the case.

10:32 a.m. Matter concludes.

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

LATER:

To pursue water rights, a property owner must file a Statement of Claimant and present to the Court evidence of the existence of a water right on their property. This evidence may include the WFR. If the property owner proves to the Court the existence of a water right on their property, the Court will recognize enforceable water rights in a “Final Decree.” ARS § 45-257(B).

Objections for this contested case can be found on the General Stream Adjudication website under “Active Cases” at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-1508-Combined-Objs-for-web.pdf>

Documents prepared by the Arizona Department of Water Resources (ADWR) as part of the November 1991 Hydrographic Survey Report (“HSR”) and the April 2014 Revised Subflow Delineation for the San Pedro River can be found on the ADWR website at:

<https://www.azwater.gov/adjudications>

Parties wishing to move forward with historical water rights claims on their property must ensure Statement of Claimants are current and that documentation of the reason the claim to the water is legally valid, also known as the “basis of right,” is presented to the Court.

1) Groundwater Well registration

All groundwater wells in Arizona must be registered whether or not they are pumping appropriable water. See Ariz. Rev. Stat. §§ 45-591–606. Forms may be found on ADWR’s website at:

<https://www.azwater.gov/permitting-wells/well-forms-and-applications>

2) Statement of Claimants (SOCs)

An SOC is a landowner’s or lessee’s (“claimant’s”) written statement to the Court that provides details about their water right claim. This claim to use public water is filed with the Arizona Department of Water Resources (“ADWR”). Although a water right

generally remains attached to the land, the SOC must reflect the current claimant's name and contact information as well as any changes to the original claim. The SOC as filed does not list current property owners or lessees. **To update an SOC, parties may make an SOC amendment, obtain an SOC assignment from the original claimant, or file a new SOC for their use. See Ariz. Rev. Stat. § 45-254.** Forms may be found on ADWR's website at:

<https://www.azwater.gov/adjudications/statement-claimant-new-use-summons-forms>

3) Basis of Right

To obtain a water right, a claimant must also present to the Court a "basis of right." A basis of right is documentation filed with ADWR either registering a water right, applying for a permit to appropriate water, or applying for a stockpond claim of right. See Arizona Revised Statutes ("Ariz. Rev. Stat.") §§ 45-182(A), 45-152(A), 45-273.

If a claimant proves that the water right claimed was initiated prior to June 12, 1919, they do not need to present an "application for a permit to appropriate," but must present a statement of claim registering their claimed water right and filed prior to August 22, 1991 (90 days before the publication of the San Pedro HSR). See Ariz. Rev. Stat. §§ 45-171, 45-182(A). ***Note that a statement of claim is a different document than a statement of claimant.*** ADWR can help the current property owners determine if a former landowner timely registered potential water rights on their property.

If a claimant either cannot prove that the water right claimed was initiated prior to June 12, 1919, or cannot present a statement of claim filed prior to August 22, 1991, the claimant must file either an "application for a permit to appropriate public water" or an "application for a stockpond claim of right." Ariz. Rev. Stat. §§ 45-152(A), 45-272(C).

If the claimed water right is for a pond constructed before 1977, less than 15 acre-feet, and used solely for watering livestock or wildlife (but not primarily for fishing or culturing of fish), the claimant should file an "application for a stockpond claim of right." Ariz. Rev. Stat. §§ 45-271, 45-272. If the claimed water right is for any other use, the claimant must file an "application for a permit to appropriate public water." Blank forms for either application may be found on the ADWR website at: <https://www.azwater.gov/surface-water/surface-water-forms-and-documents>.

Because of the time and cost involved in pursuing an "application for a permit to appropriate public water" or an "application for a stockpond claim of right," claimants should first gather as much evidence as possible to determine which, if any, of their water rights claims are for water uses that were initiated prior to June 12, 1919, and that were described in a timely filed statement of claim.

Federal land entry case files (e.g. homestead proofs and affidavits) may be useful for proving historical farming and grazing activity on your land. Resources for finding land entry filings are listed below:

- Federal land patents may be found here: <https://gloreCORDS.blm.gov/search/default.aspx>
- Pre-1908 homestead proofs may be accessed from a physical FamilySearch location. See <https://locations.familysearch.org/en/search> for more information.
- Any other land entry case files can be ordered using the following form: <https://www.archives.gov/forms/pdf/natf-84.pdf>.

While it is not necessary, Claimants are free to seek their own legal counsel at any time should they decide to do so. In addition, The Arizona Adjudications Project is taking applications to provide free, limited legal representation in the adjudication. The team can help claimants who are not already represented by an attorney. You can apply for assistance here:

<https://law.arizona.edu/academics/clinical-programs/natural-resource-use-management-clinic/arizona-adjudications-clinic>.

To contact the University of Arizona Adjudications Project call (520) 621 6722 or via email at: law-azadjudicationsproject@arizona.edu.

To contact ADWR regarding application forms and processing procedures please call 1-866-246-1414, email smitchell@azwater.gov, or visit <https://www.azwater.gov/adjudications>.

To contact the Office of the Special Water Master please call (602) 372-4115.

The property owners' email addresses are as follows:

- Doreen Edwards: azbjde@gmail.com
- Eileen M. Brien: eileenbrien@yahoo.com
- Kevin T. & Michelle M. Rasch: Contact Mr. Abernathy
- Amber Marie Parker: amber.m.parker02@gmail.com
- Wayne & Heather Cantrell: Contact Mr. Abernathy
- Michael J. Mason & Emma Huang: masonm@arizona.edu
- Andrew Abernathy: anethy.az@gmail.com