

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

August 15, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

Y. Anchondo
Deputy

IN RE THOMAS AND LEORA FARNSWORTH,

CONTESTED CASE NO. W1-11-1865

FILED: August 25, 2023

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 W4 (Consolidated)

Re: Status Conference

MINUTE ENTRY

Central Court Building – Courtroom 301

9:00 a.m. This is the time set for an Oral Argument regarding how the Claimants meet the standard “extraordinary circumstances of hardship or injustice justifying relief”, and the setting aside of the February 22, 2019 Order to Dismiss, and if the Court did set aside the Order to Dismiss, what the result may be before Special Water Master Sherri Zendri.

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

The following attorneys and parties appear through Court Connect:

- Property owners Danielle Middlebrook and Craig Dzladowicz with counsel, David Brown
- Mark McGinnis and Katrina Wilkinson appearing on behalf of Salt River Project (“SRP”)
- Joe Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe

- Anthony C. Proano on behalf of the Tonto Apache Tribe
- Sue Montgomery for the Yavapai Nation and observing on behalf of the Pascua Yaqui Tribe
- Karen Nielsen on behalf of the Arizona Department of Water Resources (“ADWR”)
- Bradley Pew on behalf of American Smelting and Refining Company (“ASARCO”)
- Charles Cahoy observing on behalf of the City of Phoenix

Mr. Brown discusses the following three (3) questions as set forth by the Special Master in the June 21, 2023, Motion for Oral Argument:

1. How the Claimants meet the standard of “extraordinary circumstances of hardship or injustice justifying relief,” *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, 220, 994 P.2d 1030, 1035 (Ct. App. 2000)?
2. What are the particular circumstances of this case that are so unique that setting aside the February 22, 2019, Order (“Order to Dismiss”) would not create a crack in the finality of the adjudication process and jeopardize other dismissed cases?
3. If the Court did set aside the Order to Dismiss, what would the result be to potential water rights holders junior to the Farnsworth’s, that were elevated in priority as a result of the Order to Dismiss?

Mr. Brown distinguished this Farnsworth case from all other cases, open and closed, in the San Pedro adjudication with a brief analysis of each case. He noted that it appears that all cases within the San Pedro basin are senior to this contested case, therefore setting aside the order to dismiss would not affect any junior right.

Mr. McGinnis disagrees with use of 60(b)(4) to reinstate the case but agrees with Mr. Brown regarding the differences between this contested case and others in the San Pedro subwatershed and feels 60(b)(6) would give the Court broad discretion. He notes that a setting aside the order to dismiss only allows the claimants to adjudicate potential rights. He feels there should be detailed criteria regarding why this case was allowed to be reconsidered.

Mr. Sparks does not agree completely with the characterization of all the cases as stated by Mr. Brown, however he does not object to setting aside the prior Order to Dismiss this case so that the new property owners may adjudicate whatever potential rights they may have. He is concerned we may see some resurrection of cases under wildcat subdivisions. He reiterates any reconsideration criteria must be clear.

Ms. Montgomery and Mr. Proano agree with Mr. McGinnis’ position.

Ms. Middlebrook addresses the Court.

Mr. Dzladowics addresses the Court.

Based on the oral argument,

IT IS ORDERED taking this matter under advisement.

9:17 a.m. Matter concludes.

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