

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

October 20, 2022

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

M. Pritchard

Deputy

FILED: November 1, 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: In re David and Fay Gard
Contested Case No. W1-11-2726

MINUTE ENTRY

Courtroom: CCB 301

1:15 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 in-person:

- Joseph Sparks and Alex Ritchie for the San Carlos Apache Tribe
- Michael Foy for Salt River Project (“SRP”)
- Bradley J. Pew and Christina Jovanovic for ASARCO
- Richard Palmer for the Tonto Apache Tribe
- Sue Montgomery for the Yavapai Apache Nation (and observing for the Pascua Yaquai Tribe)
- Joel and Donna Quisenberry
- Pamela Sparks, historical researcher for Sparks Law
- Kimberly Parks and Kome Akpolo for the Arizona Department of Water Resources (“ADWR”)

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

The United States has filed a motion to appear telephonically for today's hearing. As no reason was given for counsel's inability to appear in-person,

IT IS ORDERED denying the motion.

The Court inquires of Ms. Quisenberry if she has resolved the issues regarding the map of the irrigation areas.

Ms. Quisenberry was under the impression that the issue had been resolved once the latitude and longitude were reversed on the hand-drawn map.

Mr. Foy states they have the map and coordinates now and they need to be put into a form that could be attached to an abstract. He does not think the Quisenberrys need to complete any more steps for the map, only historical documents need to be gathered.

Mr. Sparks was able to use a Google map to match the hand-drawn map. He believes the coordinates should be added to a map that shows the photos of the location. Mr. Sparks would like them to place the coordinates on the map provided by ADWR and then file this with ADWR to be used in the abstract.

The Court inquires of the Quisenberrys if they would be able to complete the process of adding coordinates to the map.

Ms. Quisenberry states she would not be able to add coordinates due to technical limitations.

Mr. Pew has nothing further to add at this time.

Mr. Palmer agrees with Mr. Sparks and Mr. Foy. He inquires if ADWR would be able to make the requested changes to the map?

Ms. Montgomery agrees with Mr. Sparks and Mr. Palmer.

The Court inquires if the map issue has been resolved if the latitude and longitude coordinates were reversed.

Ms. Parks agrees that that issue can be resolved but does not think that was the heart of the issue. She believes that the coordinates provided were incorrect. ADWR can prepare the map with the requested information.

Mr. Foy did not verify the accuracy of the coordinates.

Mr. Sparks also did not verify the coordinates.

The Court inquires as to why Ms. Parks believes the coordinates are incorrect.

Ms. Parks states that her staff have indicated that reversing the latitude and longitude would not correct the issue, but she believes they would be able to get the proper coordinates using the hand-drawn map provided.

Ms. Quisenberry states that she was under the impression that the ADWR map and the coordinates had already been agreed upon.

All parties agree with having ADWR create a map and input the correct coordinates.

The Court explains the process going forward.

Ms. Quisenberry expresses appreciation for the in-person hearing.

Mr. Sparks believes that Ms. Quisenberry might have misunderstood the nature of the meeting with ADWR. The meeting was about what would be needed on a map to be used in a final catalogue for the Court and was not about the accuracy of maps provided. The map that ADWR will provide should be acceptable to the San Carlos Apache Tribe.

The Court inquires of Ms. Quisenberry whether she has received a response from the National Archives.

Ms. Quisenberry affirms. She received a response that the land patent in question had not been digitized yet. She then emailed the Bureau of Land Management asking how to find further information and did not receive a response. On May 6, 2022, she received a further response from the National Archives, which she forwarded to the other parties on May 9, 2022, that the land in question was not sold via the federal homestead process. Instead, the land was granted by the federal government to the state territorial government. Arizona then sold the land to the general public. They then recommended that Ms. Quisenberry contact the Arizona State Land Department.

Mr. Foy received the email in question.

Mr. Sparks received the email and assumed that Ms. Quisenberry would follow up with the State Land Department, which may have been the successor to the territorial land department.

The Court believes that this is not state trust land, and inquires if Mr. Sparks believes that the state archives might be the better resource?

Mr. Sparks believes that the State Land Department would be the appropriate resource as the land was previously held by the territory of Arizona, and then taken over by the state in 1912. He would like Ms. Quisenberry to inquire of the State Land Department as to the records regarding previous territorial land, or whether the information might be found in the state archives.

Mr. Pew received the email and would also recommend that Ms. Quisenberry follow up with the State Land Department.

Mr. Palmer agrees with Mr. Sparks.

Ms. Montgomery did not receive the email in question but has nothing further to add.

Ms. Quisenberry looked at the website of the State Land Department but was not able to find any relevant historical information or who to contact for this information.

The Court explains that the State Land Department does have the historical data, but it may take some time to locate the right person who can access that information.

Ms. Quisenberry expresses her frustration with the process.

The Court inquires whether Ms. Quisenberry has contacted the University of Arizona water law clinic.

Ms. Quisenberry was not aware of the clinic.

The Court will include that information in the minute entry. The Court will also set a further Status Conference in about six months to allow time for her to request information from the State Land Department and for the Arizona State Land Department to find any historical information it may have.

The Court inquires of Ms. Parks how long ADWR will need to complete the map.

Ms. Parks indicates 30 days would be sufficient.

The Court inquires if there are any other objections, assuming that the map is acceptable, other than priority date.

There are no further objections.

Discussion is held about the need to establish the priority date and why the documentation that has been submitted to date is insufficient for the objecting parties to reach an agreement.

Mr. Sparks wants the Quisenberrys to obtain historical records that show each sale of the land through time and prove that the land the Quisenberrys own now is the same land where people had been living and using water for irrigation since before 1919.

Based on the discussion and for reasons stated on the record,

IT IS ORDERED that ADWR shall map the irrigation fields and add the exact coordinates.

1:53 p.m. Matter concludes.

LATER:

Under Arizona law, a person may obtain a legal right to use water. This case is one of thousands of cases in the superior court in which people are seeking to establish a legal right to use appropriable water. In this case, Marie Kelly and David and Fay Gard filed Statements of Claimant asserting a legal right to use water. According to the Statement of Claimant 39-3890 filed by the Gards, 150 acre feet was used per year on the property for irrigation purposes since 1910. The rights claimed by the Gards were investigated by Arizona Department of Water Resources. It prepared a report known as Watershed File Report 113-12-DD-001. The report found domestic and irrigation uses of water on the property. Objections were filed to the report prepared by Arizona Department of Water Resources.

The Quisenberrys are successor landowners to the Gards. Joel Quisenberry filed Statement of Claimant 39-18140 claiming a water right for irrigation use and domestic use including a garden on the land.

The resolution of this case requires consideration of the claims made for legal rights to use water, the report prepared by Arizona Department of Water Resources, and the objections filed to that report. During the course of this case, a determination will be made whether a legal right exists to use appropriable water on the land owned by the Quisenberrys. The Gards claimed a right existed because the water was put to use on the property in 1910. The Statement of Claimant filed by Joel Quisenberry states that the property was purchased in 2008 and there are no records on a well.

Ms. Quisenberry reported that she has been told that the land was transferred by the federal government to the State of Arizona before it was transferred into private ownership. Accordingly, the Arizona State Land Department may have documents related to the use of the land, patents issued for the land, and the transfer of the land prior to 1919. The Arizona State Land Department can be contacted at 602-542-4631.

When a legal basis is found for a water use, such as the water having been put to beneficial use since a date prior to 1919, then that water right must be defined. A legal right is defined by the type of water use, the place where the water is used, the source of the water, the place from which the water is diverted, the amount of water used each year, and the priority date. In this case, the type of water use claimed is for domestic use and irrigation. The map that ADWR will prepare will show the place where the water is used, the source of the water, which is a well, and the location of the well.

IT IS ORDERED that Arizona Department of Water Resources shall prepare a map of the land included in Watershed File Report that shows the location of the irrigated land, the house and the well that is the claimed source of water by **December 5, 2022**.

IT IS FURTHER ORDERED setting a telephonic Status Conference on **April 6, 2023** at 1:30 p.m.

1. The objecting parties shall be prepared to advise that they have discussed any historical documents located and distributed by the Quisenberrys related to the establishment of a legal basis for a water right and the priority date. The discussion among the parties may occur using email, individual telephone calls, or a conference call.

2. Each objecting party shall be prepared to state its position with respect to its existing objections to the report, whether the *de minimis* procedures may be used to establish a water right for domestic use for one acre foot of water per year, and whether it is prepared to enter into a stipulated abstract for rights to water for irrigation use for the property. If the parties have not reached an agreement, then each party shall be prepared to advise whether additional time should be permitted to collect documents or whether a trial schedule should be set to decide the issues about which no agreement could be reached.

The Status Conference will be held using the Court Connect program. Instructions for Court Connect are attached below. If you receive this Order by email, click on the red box “Join Court Connect Hearing” on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect. Alternatively, you may attend telephonically using the following instructions:

Instructions for telephonic appearance:
Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)
Dial Participant Pass Code 357264#

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. More information about the Clinic can be found at <https://law.arizona.edu/clinics/natural-resource-use-management-clinic>

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



Court Connect Hearing Notice for In re David & Fay Gard

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re David & Fay Gard Contested Case No. W1-11-2726

Start Date/Time: April 6, 2023 at 1:30 p.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)

