

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

August 31, 2023

CLERK OF THE COURT
A.Parmar
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

FILED: September 11, 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, W-4 (Consolidated)

In re: ASLD – John and Mary Lou Smith
Contested Case No. W1-11-2844

MINUTE ENTRY

Courtroom 301 – Central Court Building

10:30 a.m. This is the time set for a Status Conference to discuss the comments/suggested corrections on the proposed abstracts before Special Water Master Sherri Zendri.

The following parties/attorneys appear virtually through Court Connect:

- Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Carrie Brennan on behalf of the Arizona Game and Fish Commission (“AZ Game and Fish”)
- Brian Heiserman observing on behalf of American Smelting and Refining Company (“ASARCO”)
- Katrina Wilkinson on behalf of Salt River Project (“SRP”)
- Sue Montgomery and Christine Olson on behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaqui Tribe)
- Joe Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Anthony Proano on behalf of the Tonto Apache Tribe
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)

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

LET THE RECORD REFLECT that all participants appear virtually through Court Connect.

Counsel for ASLD, Mr. Crestin, advises that the ASLD is the owner of the four abstracts and AZ Game and Fish is the lessee.

The Court notes that the San Carlos Apache Tribe has asked for a more concrete description. The Court concurs with the questions with respect to description. Both SRP and San Carlos Apache Tribe have questions/comments regarding the Basis of Right.

Counsel for ASLD, Mr. Crestin, addresses the Court regarding Basis of Right. He notes that the parties would prefer the Basis of Right to be 3R-2019 for Stock Pond 002 (“SP002”). ASLD does not oppose that and would agree to proceed at a lower capacity for de minimis adjudication if the objectors also agree.

Counsel for San Carlos Apache Tribe, Mr. Sparks, addresses the Court.

Counsel for AZ Game and Fish, Ms. Brennan, states that the San Carlos Apache Tribe has suggested a more precise description for the Antelope Wash. She notes that ADWR had previously gave different guidance regarding the description for stock watering.

The Court clarifies that in agreeing with San Carlos Apache Tribe’s comments, it believed more description was needed with respect the abbreviations for section, township, and range.

Counsel for ASLD, Mr. Crestin, agrees with Ms. Brennan. He explains that they did not highlight the entire wash in the past, but rather just showed where it entered the WFR or state trust land. He would defer to ADWR as to whether a newer map highlighting the wash is necessary.

Counsel for ASLD, Ms. Parks, states that an order was issued by former Special Water Master Harris for di minimis uses to show where it enters the WFR because that’s how it is done in the HSR.

Counsel for San Carlos Apache Tribe, Ms. Herrmann, requests for the portion of the stream where the stock watering occurs to be highlighted.

IT IS ORDERED that going forward the map will be highlighted but the description will remain as previously ordered with the location of where it enters the WFR or state trust land.

Counsel for SRP, Ms. Wilkinson, addresses the Court regarding the Basis of Right for Stock Watering 001 and Stock Watering 002 (“SW001 and SW002”). She notes that the SOC are matched to a stock pond not stock watering use and the WRF does not match a SOC with SW001.

Counsel for ASLD, Mr. Crestin, agrees that it is not matched on the PWR summary in the WFR but both uses are listed on page 1.

Discussion is held regarding the discrepancies.

Counsel for San Carlos Apache Tribe, Mr. Sparks, notes that GPS coordinates for the description of the stock pond and point of entry would be easier to distinguish.

Counsel for ASLD, Mr. Crestin, appreciates that it would be more precise but disagrees that GPS would be easier. While obtaining GPS coordinates are now cheaper, it would be cost prohibitive for the land department and would prefer to keep it quarter to quarter.

The Court will not order GPS coordinates for this particular case; however, it will consider Mr. Spark's comments moving forward.

The Court inquires if the PWR summary will need to be amended by Court order. Ms. Parks clarifies that as long as the documents submitted to the Court reflect the corrections made in the abstract no further order would be necessary.

IT IS FURTHER ORDERED that ADWR prepare another set of draft abstracts reflecting the corrections agreed to today as listed on Attachment I to this Minute Entry. The Court will review its calendar and set a further hearing at a later date.

Counsel for ADWR, Ms. Parks, addresses the Court regarding the discrepancy in the size for SP002. She inquires what ADWR should do with the certificate for 24-acre feet. The Court will issue guidance regarding the certificate as a later in today's Minute Entry.

Discussion is held regarding the stock pond capacity for SP002 and the di minimis application. Ms. Brennan suggests the parties confer and see if an agreement can be made regarding how to proceed. The Court will issue deadlines as a later in today's Minute Entry so the parties have an opportunity to confer and provide a joint status report.

11:01 a.m. Matter concludes.

LATER:

The following issues are still outstanding and must be addressed before ADWR can finalize revised abstracts:

PWR#114-03-005-SW001 (West Antelope Wash)

1. SOC # 39-6810 arguably applies only to the stock pond. ASLD has provided a verbal explanation, however that explanation must be provided in writing for all parties to review. Alternatively, the SOC could be amended to clearly document what ASLD states is the intent of claim.
2. Place of Use and Point of Diversion must be updated to list the location of the watercourse (Antelope Wash) entry onto the property.

PWR#114-03-005-SP002 (Cowhead Tank; aka 4 Corners Tank)

1. The size of this stockpond is inconclusive. ASLD will confer with the objectors to determine how they would like to move forward.

PWR#114-03-005-SP002 (Cowhead Wash)

1. SOC # 39-6813 arguably applies only to the stock pond. ASLD has provided a verbal explanation, however that explanation must be provided in writing for all parties to review. Alternatively, the SOC could be amended to clearly document what ASLD states is the intent of claim.
2. Place of Use and Point of Diversion must be **confirmed** to be the location of the watercourse (Cowhead Wash) entry onto the property.

IT IS ORDERED that ASLD will work with applicable parties to provide ADWR the additional information listed above by **Friday October 20, 2023**. For any information that has not yet been determined by that deadline, ASDL will provide a status report to the Court by **Friday October 20, 2023**, with an expected date of resolution.

IT IS FURTHER ORDERED that ADWR will provide to the Court and all parties by **Friday, November 3, 2023**, revised drafts of abstracts for any potential water rights that have sufficiently complete information from ASLD.

IT IS FURTHER ORDERED that the any stipulated abstracts will be provided to the Court by **Friday, December 8, 2023**. For any abstracts that remain outstanding by that deadline, ASDL will provide a status report to the Court by **Friday, December 8, 2023**, with an expected date of resolution or proposed hearing schedule.

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

ATTACHMENT I

**Proposed Abstracts of Water Right – San Pedro Watershed
Antelope Wash**

Attribute	Proposed abstract of Water Right (submitted 2/28/2023)	Corrections
1. Proposed Water Right No.	114-03-005-SP001	
2. Owner of Water Right		Arizona State Land Department
3. Landowner	Arizona State Land Department	
4. Statement of Claimant No.(s)	39-2957, 39-6810	
5. Lessee or Permittee	Smith, John E. & Mary Lou	Arizona Game and Fish Commission
6. Basis of Right	38-70651, 38-94290*	
7. Beneficial Use	Stock and wildlife watering from a stockpond	
8. Priority Date	12/31/1946	
9. Quantity	Not to exceed (\leq) 4 acre-feet annually with continuous fill	
10. Place of Use	NWNWSE8 07S 15E	NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 8, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
11. Point of Diversion	I01 (NWNWSE8 07S 15E)	I01 - NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec 8, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
12. Source of Water	Antelope Wash	
13. Facility Name	Antelope Tank	

* pending

Attribute	Proposed abstract of Water Right (submitted 6/15/2023)	Corrections
1. Proposed Water Right No.	114-03-005-SW001	
2. Owner of Water Right	Arizona State Land Department	
3. Landowner	Arizona State Land Department	
4. Statement of Claimant No.(s)	39-6810	TBD
5. Lessee or Permittee	Arizona Game and Fish Commission	
6. Basis of Right	36-4959	
7. Beneficial Use	Stock and wildlife watering	
8. Priority Date	12/31/1883	
9. Quantity	Reasonable use	
10. Place of Use	NWSW8 07S 15E	Must be updated to watercourse entry onto property
11. Point of Diversion	NWSW8 07S 15E	Must be updated to watercourse entry onto property
12. Source of Water	West Antelope Wash	
13. Facility Name	N/A	Highlight entire wash area on map

ATTACHMENT I continued

**Proposed Abstracts of Water Right – San Pedro Watershed
Cowhead Wash**

Attribute	Proposed abstract of Water Right (submitted 6/15/2023)	Corrections
1. Proposed Water Right No.	114-03-005-SP002	
2. Owner of Water Right	Arizona State Land Department	
3. Landowner	Arizona State Land Department	
4. Statement of Claimant No.	39-006813	
5. Lessee or Permittee	Arizona Game and Fish Commission	
6. Basis of Right	36-004960	3R-2019, 38-72440
7. Beneficial Use	Stock and wildlife watering from a stockpond	
8. Priority Date	6/7/1960	
9. Quantity	Not to exceed (\leq) 4 acre-feet annually with continuous fill	TBD
10. Place of Use	Lot1 19 07S 15E	Lot 1 of SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 19, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
11. Point of Diversion	Lot1 19 07S 15E	B01 - Lot 1 of SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec 19, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
12. Source of Water	Cowhead Wash	
13. Facility Name	Cowhead Tank; aka 4 Corners Tank	

Attribute	Proposed abstract of Water Right (submitted 2/28/2023)	Corrections
1. Proposed Water Right No.	114-03-005-SW002	
2. Owner of Water Right		Arizona State Land Department
3. Landowner	Arizona State Land Department	
4. Statement of Claimant No.(s)	39-006813	TBD
5. Lessee or Permittee	Smith, John E. & Mary Lou	Arizona Game and Fish Commission
6. Basis of Right	3R-2019, 36-4960, 38-72440	36-4960
7. Beneficial Use	Stock and wildlife watering	
8. Priority Date	12/31/1883	
9. Quantity	Reasonable use	
10. Place of Use	NESWNW19 070S 150E	Lot 1 of NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 19, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
11. Point of Diversion	D02 (NESWNW19 070S 150E)	D02 - Lot 1 of NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 19, T7S, R15E of the Gila and Salt River Base and Meridian, Pinal County, Arizona
12. Source of Water	Cowhead Wash	
13. Facility Name	N/A	Highlight entire wash area on map