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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

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)

Contested Case No. W1-11-3107

Final Report

CONTESTED CASE NAME: *In re Paul L. Sale Investment Company*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Final Report determining that the Adjudication Court has jurisdiction to consider severances and transfers of water rights that have been included in the Catalog of Proposed Water Rights. Objections must be filed by September 25, 2023.
NUMBER OF PAGES: 10
DATE OF FILING: March 24, 2022

1 The question presented is whether the Adjudication Court¹¹ has jurisdiction to consider
2 a claimant's request to sever and transfer a water right approved by the special master for
3 inclusion in the Catalog of Proposed Water Rights created pursuant to §15.00 Rules for
4 Proceedings Before the Special Master (the "Catalog") before the water right is finally
5 decreed. After the final decree is entered, the Adjudication Court has jurisdiction over the
6 severance and transfer process. Two decades ago, Judge Ballinger determined in the context
7 of a decision approving *de minimis* procedures that "this court has final approval of the
8 severance and transfer of these rights." Decision in W1-11-19 at 4 (Sept. 27, 2002). This
9 ruling is consistent with the language of A.R.S. §45-257(B)(3) that directs the court to retain
10 jurisdiction over the decreed water rights, with Arizona Department of Water Resources
11 ("ADWR") assuming the responsibility for the administration and enforcement of the decree.
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14 Here, the water rights have not been finally decreed. The question presented occurs
15 at a very specific point in the water adjudication process. It occurs after the following steps
16 in the adjudication process have been completed: the Adjudication Court assumed jurisdiction
17 over the claimed rights, a contested case was initiated to adjudicate the rights, and proposed
18 abstracts describing the attributes of the water rights were approved for inclusion in the
19 Catalog. The final step in the process is for the Catalog to be submitted to the superior court
20 judge assigned to the adjudication for review and a final decree entered. This final step has
21 not yet begun.
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27 ¹¹ "Adjudication Court" refers to the judicial forum authorized by Article 9, Title 25 of the
28 Arizona Revised Statutes that provides for the judicial determination or establishment of the nature,
extent, and priority of the rights of all persons to the use of water in a river system and source. A.R.S.
§§ 45-251(2) and 45-252(A).

1 **A. Background**

2 The parties have settled their differences and objections to the proposed water rights
3 included in the Watershed File Reports prepared by ADWR. They stipulated to a set of
4 proposed abstracts for irrigation rights that fully resolved any remaining disputes in this case.
5 Those abstracts were submitted to the special master for approval. By order dated April 13,
6 2022, the special master approved the abstracts and added them to the Catalog. Typically,
7 once abstracts have been approved for entry into the Catalog, only a limited set of objections
8 can be considered as part of the final process to approve proposed abstracts as decreed water
9 rights. §15.05 Rules for Proceedings Before the Special Master. Given that the parties
10 negotiated a resolution of the objections to the Watershed File Reports, any additional
11 objections that may be raised during the final review stage are substantially limited.
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14 It is at this juncture, after the attributes of a water right, including the legal basis of the
15 rights, have been approved by a judicial officer but before the issuance of the final decree,
16 that Salt River Agricultural Improvement and Power District and Salt River Valley Water
17 Users' Association (collectively "SRP") proposes to change the place and purpose of use of
18 the water rights described in the abstracts. Specifically, SRP desires to sever the irrigation
19 water rights defined by the attributes in the approved abstracts from the land to which they are
20 appurtenant and transfer the rights for use as instream flow in the San Pedro River to protect
21 wildlife habitat in the San Pedro River Preserve. The change would affect the attributes of
22 the water rights included in the proposed abstracts such as the type of use and place of use.
23 Before such a change can occur, SRP must obtain permission for the severance and transfer.
24 A.R.S. §45-172. It filed this motion to request that the Adjudication Court consider and rule
25 on a requested severance and transfer and change in use of the water rights either with the
26 technical assistance of ADWR or in conjunction with ADWR but not *ad seriatim*.
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1 **B. Jurisdiction**

2 Joined by the Yavapai-Apache Nation and the Pascua Yaqui Tribe, SRP argues that
3 the Adjudication Court has exclusive jurisdiction to authorize the severance and transfer of a
4 water right once an abstract for a water right has been approved for inclusion in the Catalog.
5 Alternatively, it contends that the Adjudication Court has concurrent jurisdiction with ADWR
6 to approve or disapprove a requested severance and transfer. Salt River Project advances a
7 host of arguments in support of its positions including its assessment that it would be more
8 practical and more efficient for the Adjudication Court to rule on its request for a severance
9 and transfers, relying on the expertise of ADWR provided as part of the adjudication process,
10 rather than transfer the proceeding in its entirety to ADWR and effectively stay the final
11 decrees process until ADWR completes its administrative proceedings. In response, ADWR
12 contends that the resolution of the issue does not depend on considerations of efficiency or
13 practicality because the issue is one of statutory construction. It argues that the legislature
14 has granted the ADWR director exclusive jurisdiction to approve and disapprove applications
15 to transfer and sever a water right and change uses, such as the ones involved in this case, at
16 any time during the adjudication of those rights prior to entry of a final decree. Each party
17 argues that the statutes governing the administration and general provisions applicable to
18 “Waters” under Chapter 1, Title 45 of the Arizona Revised Statutes supports its position.
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22 It is a basic principle of statutory construction that related statutes should be
23 interpreted consistently and harmoniously with one another if reasonably practical. *Ruth*
24 *Fisher Elementary Sch. Dist. v. Buckeye Union High Sch. Dist.*, 202 Ariz. 107, 110, ¶ 12, 41
25 P.3d 645, 648 (App. 2002) (citing *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d
26 731, 734 (1970)). Arizona Revised Statute §45-172(A) permits a water right to be severed
27 from the land on which it is used and transferred for use on other land. A person may also
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1 change the beneficial use of water to which the person claims a water right. A.R.S. §45-
2 156(B). As ADWR emphasizes, each statute requires that the director of ADWR approve the
3 requested action for a water right such as the ones involved in this contested case. In the case
4 of a severance and transfer, additional conditions must also be satisfied. The water severed
5 and transferred must be put to designated uses (A.R.S. §45-172); quantified (A.R.S. §45-
6 172(A)(2)); limited so as to not infringe or interfere with vested or existing rights (*id.*), and be
7 the subject of a valid water right that has not been forfeited or abandoned (A.R.S. §45-
8 172(A)(3)).
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10 Article 9, Chapter 1, Title 45 of Arizona Revised Statutes (“Article 9”) authorizes the
11 Adjudication Court to establish and determine the nature, extent, and priority of the rights of
12 all persons to use water in a river system or source. A.R.S. §§45-251(2) and 45-252(A). The
13 court has interpreted these statutes broadly to find that the Adjudication Court had exclusive
14 jurisdiction to determine issues related to water rights subject to an adjudication. *Gabel v.*
15 *Tatum*, 146 Ariz. 527, 529, 707 P.2d 325, 327 (App. 1985). The *Gabel* Court found that a
16 dispute among landowners concerning rights to water from a ditch must be resolved by the
17 Adjudication Court due to its statutory mandate and exclusive jurisdiction to determine “the
18 nature, extent and relative priority of the water rights of all persons in the river system.” *Id.* at
19 529; A.R.S. § 45–252(A). The court further held that the Adjudication Court should resolve
20 the related issues surrounding the maintenance of the ditch rather than litigate those issues in
21 a separate case because “as a practical matter, maintenance duties follow water rights. The
22 larger action, already underway, can efficiently and fairly decide the problem of duties
23 correlative with rights.” *Id.* at 529, 707 P.2d at 327. Consistently with the *Gabel* decision,
24 the Arizona Court of Appeals, in an unpublished decision again broadly interpreted the
25 jurisdiction of the Adjudication Court for the General Adjudication of All Rights to Use Water
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1 in the Gila River System and Source to preclude a Yavapai Superior Court from assuming
2 jurisdiction in cases that involve the allocation of water rights to the Gila River and all of its
3 tributaries. See *United States v. Verde Ditch Co.*, 1 CA-CV 15-0690, 2017 WL 1364860, at
4 *4 (Ariz. Ct. App. Apr. 13, 2017). The comprehensive grant of authority to the Adjudication
5 Court under Article 9 vests subject matter jurisdiction in the Adjudication Court, to the
6 exclusion of other state courts, for all cases that require a determination of water rights in a
7 river system and source for which a petition for a general adjudication has been filed. *Gabel*
8 *v. Tatum*, 146 Ariz. 527, 529, 707 P.2d at 327 .

10 Recently, the Arizona Supreme Court found that the statutory grant of authority under
11 Article 9 precluded ADWR from engaging in a determination of the attributes of a water right
12 subject to an adjudication. *Silver v. Pueblo del Sol Water Company*, 244 Ariz. 553, 423 P.3d
13 348 (2018). The Supreme Court reversed the lower court's decision that ADWR should
14 evaluate water rights subject to the adjudication as part of ADWR's process to ascertain
15 whether a water user had established an adequate water supply. The Court held that ADWR
16 did not have the authority to determine the water rights because "that is the exclusive domain
17 of the Gila Adjudication." *Id.* at 562, 423 P.3d at 357 (citing *Gila III*, 195 Ariz. at 414, ¶2,
18 989 P.2d at 742). The *Gila III* Court reached the conclusion that the Court relied on in *Silver*
19 *v. Pueblo del Sol Water Company*, *supra*, based on the statutory language of A.R.S. §§45-
20 251(2) and 45-252(A). *In re the General Adjudication of all Rights to Use Water in the Gila*
21 *River System & Source (Gila III)*, 195 Ariz. 411, 989 P.2d 739 (1999).

24 Arizona Department of Water Resources' approach to harmonize the statutes and the
25 relative authority and jurisdiction of ADWR and the Adjudication Court makes for an
26 awkward fit, at best. It intertwines the agency's administrative processes and the Adjudication
27 Court's judicial processes. Arizona Department of Water Resources explained that A.R.S.
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1 §45-172(3) requires the applicant to “prove the water right sought to be severed and
2 transferred has been lawfully perfected . . . and if the Special Master has approved a water
3 right abstract and included it in the Special Master’s Catalog, that information may also be
4 provided.” Arizona Department of Water Resources Response to Salt River Project’s Motion
5 Concerning Severance and Transfer and Change in Use Application at 13. As described, the
6 director would then review the determination made by a judicial officer that the water right
7 has a lawful basis. Once the director issues his decision to grant or deny the severance and
8 transfer, that decision is subject to judicial review. A.R.S. §45-172(B).

10 If a court, other than the superior court judge assigned to the adjudication, is designated
11 to judicially review the director’s decision, jurisdictional issues arise under the *Gabel*
12 decision. If the Adjudication Court undertakes the judicial review, then it will be in the
13 position of reviewing the decision of its technical advisor, although ADWR will not have
14 acted in its capacity as technical advisor. In either event, the determination of the water
15 attributes in a severance and transfer proceeding outside the adjudication will force the court
16 to apply a standard of review to water right attributes found by ADWR different than the
17 standards applied in the adjudication process. Under the controlling adjudication statutes, the
18 director’s recommendations regarding water rights claims in the adjudication are either not
19 given any presumption of correctness or are given the weight deemed appropriate by the court
20 and the special master. §§A.R.S. 45-256(C)-(E). Water right attributes decided as part of a
21 separate administrative severance and transfer proceeding, in contrast, would require the court
22 to defer to the agency’s findings. *See Legacy Foundation Action Fund v. Citizens Clean*
23 *Elections Commission*, No. CV-22-0041-PR, 2023 WL 2320296, at * (Ariz. Sup. Ct. March
24 2, 2023).

1 Arizona Department of Water Resources also takes the position that the two sets of
2 statutes create no conflict because a severance and a transfer is not an adjudication of a water
3 right because the director does not determine a priority date as a part of the process. The
4 adjudication of a water right is not limited to a determination of a priority date. An
5 adjudication is a determination of the attributes that define a water right, many of which are
6 involved in the severance and transfer process such as the beneficial use of the water, the
7 location, the quantity, and the legal basis for the claimed water right. The statutes cannot be
8 interpreted as parallel provisions that do not intersect.
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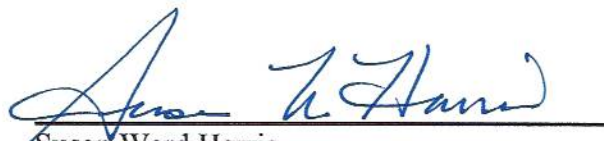
10 Arizona Department of Water Resources further argues at length that the severance
11 and transfer provisions have historically been under the control of Arizona Department of
12 Water Resources and its predecessor administrative agency. The historical argument,
13 however, does not account for the advent of Article 9 and the Legislature's grant of broad
14 jurisdiction to the Adjudication Court to determine the water rights, including the individual
15 attributes that define the water right in a river system and source.
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17 Related statutes must be construed as a whole to further the intent of the legislature.
18 *Chase v. State Farm Mut. Auto Ins. Co.*, 131 Ariz. 461, 464, 641 P.2d 1305, 1308 (1982). The
19 general statutory mandate under A.R.S. §45-172 that the director approve most severances
20 and transfers of water rights throughout the state is consistent with ADWR's historical
21 summary of the regulation of appropriable water. The passage of Article 9 by the legislature
22 added a new process to the historical regulation of water rights. The legislation created a
23 specific set of statutes that authorize the Adjudication Court to fully adjudicate all timely filed
24 claims for water rights, which necessitates ruling on all attributes such as place of use and
25 type of use necessary to issue a decreed right. The statutes can be regarded as a coherent
26 whole based on the Arizona Supreme Court's decision that created an exception or limitation
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1 on the scope of the director's general authority to administer and regulate water uses in
2 administrative proceedings when the determination of the attributes of the existing water
3 rights concerns water rights subject to an adjudication. *Silver v. Pueblo del Sol Water*
4 *Company*, 244 Ariz. 553, 562, 423 P.3d 348, 357 (2018). Thus, the statutes can be harmonized
5 by recognizing that once the Adjudication Court has exercised its jurisdiction and judicial
6 findings have been made as to water right attributes, any further determination that must be
7 made to fully define the water rights attributes that will be finally decreed, such as those
8 necessitated by a severance and transfer, must be made within the adjudication proceedings.
9 These proceedings do not exclude ADWR. To the contrary, the adjudication process
10 explicitly involves ADWR given its obligation and the legislative directive that ADWR
11 provide the hydrological and other expertise necessary for the issuance of final decreed water
12 rights that will provide all water users in the State with a greater sense of certainty. Based on
13 the foregoing,
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16 **IT IS ORDERED** granting Salt River Project's Motion finding that the Adjudication
17 Court has jurisdiction in this case to consider a severance and transfer of the water rights
18 considered in this case that have been included in the Catalog.
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21 DATED: March 24, 2023

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25 Susan Ward Harris
26 Special Master
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On March 24, 2023, the original of the foregoing was mailed to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for this contested case.



Emily Natale