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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF APACHE
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9 IN RE THE GENERAL
10 ADJUDICATION OF ALL RIGHTS
11 TO USE WATER IN THE LITTLE
12 COLORADO RIVER SYSTEM AND
13 SOURCE

CV6417

Case: CV6417-33-6678

14 **ORDER INITIATING CONTESTED
15 CASE AND SETTING INITIAL
16 CONFERENCE**

17 CONTESTED CASE NAME: *In re Silver Creek Flood Control District*

18 HSR INVOLVED: Silver Creek Hydrographic Survey.

19 DESCRIPTIVE SUMMARY: The Clerk of Apache County Superior Court is directed to
20 initiate CV6417-033-6678. Initial conference set for **March 27, 2024, at 10:00 a.m.**

21 NUMBER OF PAGES: 14

22 **General Explanation**

23 This order opens a case to determine rights to use water on land that the Apache County
24 Assessor has identified as owned by Silver Creek Flood Control District. The first step in this
25 case is an initial conference with the Court, scheduled for **March 27, 2024, at 10:00 a.m.** to
26 determine if the landowner is interested in pursuing potential water rights. Interested Parties
27 **MUST** attend the scheduled initial conference if they plan to pursue potential water rights.
28 Failure to appear at the initial conference could result in the dismissal of the case and the loss

of water rights associated with the property.

In this case, David M. Gibson filed Statement of Claimant (“SOC”) 39-88784 on October 4, 1985, to assert claims to use water on land that appears to include Apache County tax parcel 106-22-002B. This parcel is currently owned by Silver Creek Flood Control District.

The first step in this case will be an initial conference, where landowners will state whether they intend to pursue water rights.

Additional background information on the process for determining water rights in Arizona can be found on Attachment A.

Details of the Case

On October 4, 1985, David M. Gibson filed Statement of Claimant (“SOC”) 39-88784 with the following claim:

Water Source	Water Use	Point of Diversion	Use Location	Basis of Right
Brown Creek	Lake that supports wildlife	NESESW 6 T10N R24E	NW Section 6 T10N, R24E	Prior Decree

The Arizona Department of Water Resources (“ADWR”) investigated the claims made by David M. Gibson (“Claimant”) and prepared Watershed File Report No. 33-52-CCA-001 (“WFR”), published in the Final Silver Creek Watershed Hydrographic Survey Report (1991) (“Silver Creek HSR”). The WFR recorded that a diversion from Brown Creek was supplying water to Ortega Lake, a storage reservoir used primarily for flood control. ADWR found that Ortega Lake is located within NWNWNW Section 6 Township 10 North, Range 24 East. A copy of the WFR is attached as Attachment B. A copy of a map displaying the area investigated by ADWR, denoted by “(1),” is attached as Attachment C.

1 After ADWR issued the WFR, objections were filed to the findings made in the WFR
2 by Salt River Project, the United States, and the Arizona State Land Department. The Hopi
3 Tribe, the Navajo Nation, and the San Juan Southern Paiute Tribe joined in the United States's
4 objections. The purpose of this case is to consider the claims made for water rights in SOC
5 39-88784 and to resolve the objections to WFR 33-52-CCA-001.

6 7 **Claimant and Landowners**

8 The WFR listed Silver Creek Flood Control District as the owner of the property
9 investigated in 1991. According to maps obtained from the Apache County Assessor
10 ("Assessor"), the land investigated appears to comprise Apache County tax parcel 106-22-
11 002B.

12 A copy of the map on file with the Apache County Assessor, showing the relevant tax
13 parcels and current ownership, is attached as Attachment D. The public records of the
14 Arizona Department of Water Resources do not contain any assignments of the SOC listed in
15 the WFR to any of the current landowners, and the current landowners do not appear to have
16 filed any additional SOC's.

17 Property owners must present to the Court evidence showing that a water right exists
18 on their property. This evidence may include the WFR. Alternatively, the property owners
19 may settle with objectors. If either the property owner proves to the Court the existence of
20 water rights on its property or enters into a valid settlement approved by the Court, the Court
21 will recognize enforceable water rights in a "Final Decree." Ariz. Rev. Stat. § 45-257(B).

22 This is an Order from the Court, and all parties must comply with the following
23 instructions. The failure to obey this, or any, court order may result in the dismissal of this
24 case and the loss of any potential water rights associated with the property mentioned in this
25 order. If you have questions regarding this Order or any of the attachments, please contact
26 the General Stream Adjudication, Office of the Special Water Master, at (602) 372-4115.
27 Please note that staff can only answer administrative questions and cannot provide legal
28

1 advice.

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3 **IT IS ORDERED:**

4 1. Case Initiation. This contested case shall be known as *In re Silver Creek*
5 *Flood Control District*, and it will resolve claims to appropriable water asserted in
6 Statement of Claimant 39-88784 and objections that were filed to Watershed File
7 Report No. 33-52-CCA-001.

8 2. Initial Conference. An initial conference shall be held on **March 27, 2024 at**
9 **10:00 a.m.** to determine whether current landowners intend to pursue claims for
10 water rights. The conference will be held using the Court Connect program.
11 Instructions for Court Connect are attached as Attachment F. If you receive this
12 order by email, click on the red box “Join Court Connect Hearing” on the attached
13 instructions to make an appearance. If you do not receive this order by email, log
14 into the Court Connect program on the internet by typing
15 <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet,
16 you may attend telephonically using the telephone number and access code
17 included in the instructions for Court Connect.

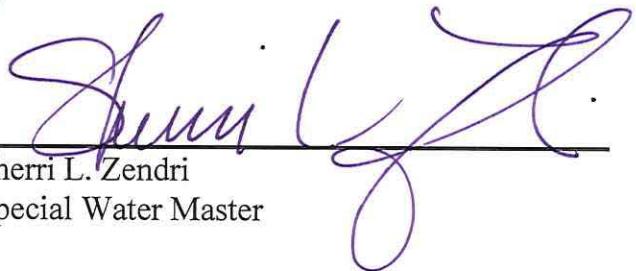
18 3. Parties. The litigants in this contested case are the Claimant, the current
19 landowners, and all parties who filed objections to the Watershed File Report. The
20 objectors in this case are the Salt River Project, the United States, the Arizona State
21 Land Department, the Hopi Tribe, the San Juan Southern Paiute Tribe, and the
22 Navajo Nation.

23 4. Objections. Copies of objections filed to WFR No. 33-52-CCA-001 can be found
24 under the case number CV 6417-33-6678 on the following website:
25 <http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp>.
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27 5. Court-Approved Mailing List.
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- 1 A. The initial Court-approved mailing list for this case shall include all
2 persons listed on Attachment E to this Order. The list may be modified
3 only by filing a motion with the Special Master to amend the Court-
4 approved mailing list. Litigants are responsible for using the current
5 Court-approved mailing list.
- 6 B. A copy of any pleading filed with the Clerk of the Apache County
7 Superior Court in this case shall be served upon each person listed on the
8 Court-approved mailing list.
- 9 C. Claimants wishing to be added or removed from the mailing list shall file
10 a motion with the Special Master. Parties allowed to intervene will be
11 automatically added to the Court-approved mailing list.
- 12 D. The Clerk of the Court will send copies of all minute entries and orders
13 issued in this case to the parties listed on the Court-approved mailing list.
- 14 E. Claimants who would like to receive courtesy copies of minute entries
15 and orders may request inclusion on an email list by sending a request to
16 emily.natale@jbazmc.maricopa.gov.

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18 Signed this 20th day of February 2024

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22 Sherri L. Zendri
23 Special Water Master
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1 On February 20, 2024 the original of the foregoing
2 was delivered to the Clerk of the Apache County Superior Court
3 for filing and distributing a copy to all persons listed on the
4 Court-approved mailing list for this contested case, a copy of
5 which is attached hereto as Attachment E, and all persons on the
6 Court-approved mailing list for case CV6417.

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Emily Natale

ATTACHMENT A

General Background on the Water Rights Determination Process in Arizona

A general stream adjudication is a judicial proceeding to determine the quantity and priority of all water rights in a river system. Arizona is undertaking general stream adjudications of both the Gila River and the Little Colorado River systems. A river system includes surface water flowing “in streams or other natural channels”, groundwater sufficiently connected to that surface water, and water subject to claims by the federal government. Ariz. Rev. Stat. § 45-251(7). Recognizing and respecting water rights and the priority of such rights is important in Arizona where times of drought or water scarcity can occur.

All cases begin with the filing of a “Statement of Claimant,” (“SOC”) in which a property owner makes a claim for a right to use surface water on their property. Ariz. Rev. Stat. § 45-254(A). This person is the “claimant.” The SOC contains, among other characteristics, a description of the source and quantity of the water used, the location of use, the location from which the water was diverted, and the date when the water was first put to use. *Id.* § 45-254(C).

After the property owner files the SOC, the Arizona Department of Water Resources (“ADWR”) prepares a “Watershed File Report,” (“WFR”) in which ADWR investigates the claims in the SOC and recommends water rights associated with the property. *Id.* § 45-256(B). ADWR compiles all WFRs for a watershed into a comprehensive Hydrographic Survey Report (“HSR”) and publishes the report for public review and comment. In response, other claimants in the Adjudication may file “objections” disputing the information or recommendations in the WFR. The individuals who file objections are called “objectors.”

This “contested case”, one of thousands in the Little Colorado River System, will evaluate claims asserted in specific Statements of Claimant while considering objections to the WFR that reported ADWR’s initial inspection of those claims.

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ATTACHMENT B
Watershed File Report

LAND OWNER	WATERSHED FILE NO.
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SILVER CREEK FLOOD CONTROL DISTRICT	033-52-CCA-001

A P P L I C A B L E F I L I N G S A N D D E C R E E S

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION TWNP RNGE	CLAIM DATE	DIVERSION LOCATION SECTION TWNP RNGE
10-0091029		IRRIGATION OTHER		SESE36 110N 230E S2SW31 110N 240E N206 100N 240E	< 1896	06 100N 240E 07 100N 240E
20-0009469		DOMESTIC STOCKWATERING			1916	
33-0090552	PROTEST	IRRIGATION	30.00	01 120N 210E 02 120N 210E 11 120N 210E	1986	SESW06 100N 240E
39-0088784		STOCKWATERING			1909	NESESW06 100N 240E

D W R A N A L Y S I S O F F I L I N G S A N D D E C R E E S

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
10-0091029	IRRIGATION DOMESTIC STOCKWATERING OTHER	NONE NONE INCIDENTAL OTHER	DO1	PS001
20-0009469			DO1	PS001
33-0090552			DO1	PS001
39-0088784	STOCKWATERING REC/FISH/WLDF	INCIDENTAL INCIDENTAL	DO1	PS001

D I V E R S I O N S

DIV #	LOCATION SECTION TWNP RNGE	DRAINAGE AREA/ WATER SOURCE NAME	DIVERSION NAME	REMARKS
DO1	SESESW06 100N 240E	SILVER CREEK	BROWN CREEK DIV.	

R E S E R V O I R S

PWR #	LOCATION SECTION TWNP RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
PS001	NWNWNW06 100N 240E	DO1	SURFACE	1935	ORTEGA LAKE	FLOOD CONTROL STOCKWATERING WILDLIFE

P W R S U M M A R Y

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	** APPARENT FIRST USE ** DATE	DATA SOURCE	DRAINAGE AREA/ WATER SOURCE NAME
PS001	39-0088784	10-0091029 20-0009469 33-0090552	1896	10-09-1-29	WHITE LAKES SILVER CREEK
NONE	NONE				

Q U A N T I T I E S O F U S E

PWR #	QUANTIFICATION TYPE	APPLICABLE ACREAGE/SURFACE AREA (ACRES)	WATER DUTY	ESTIMATED VOLUME	REMARKS
PS001	MAX. AREA/CAP	280.0		2380.0 AF	

FILINGS AND DECREES

FILING 10-09-1-129 IS A NOTICE OF WATER APPROPRIATION FILED BY HENRY HUNING ON JULY 31, 1896 IN NAVAJO COUNTY. THE NOTICE DESCRIBES THE INTENT TO CONSTRUCT AND MAINTAIN A RESERVOIR FOR "IRRIGATION, DOMESTIC, STOCK AND OTHER BENEFICIAL PURPOSES." THE RESERVOIR WAS TO BE LOCATED AT THE: SE1/4, SECTION 36, T.11N., R.23E.; THE S1/2 OF THE SW1/4, SECTION 31, T.11N., R.24E.; THE N1/2, SECTION 6, T.10N., AND THE N1/2 OF THE SE1/4, SECTION 6, T.10N., R.24E. DECREE 20-09-469 CONCERNS DIVERSION D1 ON BROWN CREEK. THE DECREE IS NAVAJO COUNTY SUPERIOR COURT CASE #469, AUGUST 21, 1916: SNOWFLAKE & TAYLOR IRRIGATION COMPANY (PLAINTIFF) VS. NAVAJO-APACHE BANK AND TRUST COMPANY, AND IGNACIO BAZAN AND F.W. NELSON (DEFENDANTS). FOR MORE INFORMATION ON THIS DECREE AND ORTEGA LAKE, SEE MAJOR USERS REPORTS IN VOLUME 1.

DIVERSIONS

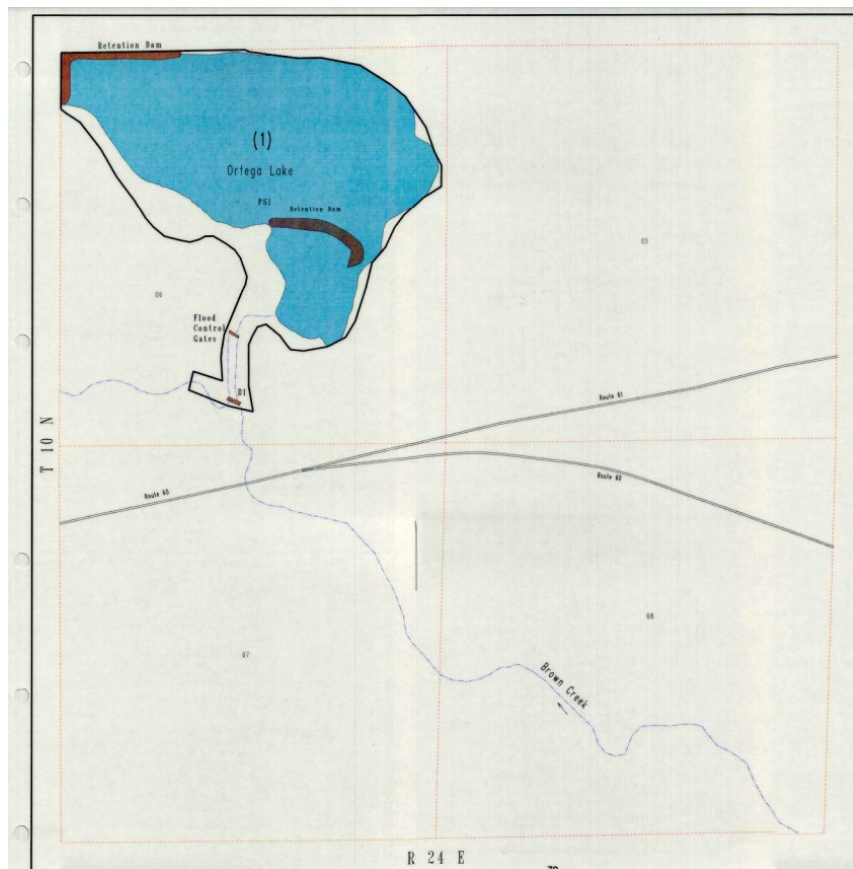
D1 - FLOODGATE DIVERSION FROM BROWN CREEK INTO A PRIMARY STORAGE RESERVOIR (ORTEGA LAKE). THIS DIVERSION IS LOCATED WITHIN THE SILVER CREEK DRAINAGE AREA.

USES AND RESERVOIRS

PS1 - PRIMARY STORAGE RESERVOIR (ORTEGA LAKE). THE RESERVOIR IS A NATURAL DEPRESSION WITH INCREASED STORAGE CAPACITY PROVIDED BY A RETENTION DAM AT THE NORTHWEST END OF THE DEPRESSION. ORTEGA LAKE FUNCTIONS PRIMARILY AS A FLOOD CONTROL IMPOUNDMENT.

ATTACHMENT C

WFR Map



ATTACHMENT D

Assessor Map



106-22-002B
Silver Creek Flood
Control District

ATTACHMENT E

Initial Court-Approved Mailing List

Arizona Department of Water Resources
Kimberly R. Parks and Karen J. Nielsen
1110 West Washington, Suite 310
Phoenix, AZ 85007

C. Campbell, P. Londen, P. Bowden
OSBORN MALEDON, P.S.
2929 North Central Avenue, Ste 2100
Phoenix, AZ 85012

Arizona State Land Department
Carrie Brennan and Kevin Crestin
Arizona Attorney General
Natural Resources Section
2005 North Central
Phoenix, AZ 85004

San Juan Southern Paiute Tribe
J. Kolsrud, I. Fimbres-Ruiz, K. Shaffer
May, Potenza, Baran & Gillespie, PC
1850 N. Central Avenue, Ste 1600
Phoenix, AZ 85004-4633

Clerk of the Superior Court
Apache County
P. O. Box 365
St Johns, AZ 85936

Navajo Nation
Evan Hiller, Candace French, Jeffrey
Leonard, Judith Dworkin and Kathryn
Hoover
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251

Mark J. Widerschein
Maggie Woodward
US Dept of Justice – ENRD
Natural Resources Section
PO Box 7611
Washington, DC 20044

Navajo Nation Department of Justice
Ethel Branch & G. Michelle Brown-Yazzie
PO Drawer 2010
Window Rock, AZ 86515

Special Master Sherri Zendri
Superior Court of Arizona
201 W. Jefferson Street
Courtroom 301
Phoenix, AZ 85003

Salt River Project
J.B. Weldon, M.A. McGinnis, M.K. Foy
Salmon, Lewis, and Weldon
2850 E. Camelback Rd. Suite 200
Phoenix, AZ 85016.

Vanessa Boyd Willard
U. S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202

Silver Creek Flood Control District
PO BOX 1494
Taylor, Arizona 85939

Hopi Tribe
General Counsel of the Hopi Tribe
P. O. Box 123
Kykotsmovi, AZ 86039

David M. Gibson
1415 East 57th St.
Chicago, IL 60637

ATTACHMENT F



Court Connect Hearing Notice for *In re Silver Creek Flood Control District*

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 Silver Creek Flood Control District*

Contested Case No. CV6417-33-6678

Start Date/Time: March 27, 2024 at 10:00 a.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](#)