

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

October 8, 2024

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

S. Ortega
Deputy

In re: James K. and Wanda L. Bell
Contested Case No. W1-11-1506

FILED: October 10, 2024

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: Initial Conference

MINUTE ENTRY

Courtroom: CCB 301

9:07 a.m. This is the time set for an initial conference.

The following attorneys and parties appear virtually and/or telephonically:

- Landowners Nancy Luyten
- Landowner Caleb David Barajas
- Landowner Doris Weaver on behalf of the Weaver Family Trust
- Michael Carter for the Gila River Indian Community
- Laurel A. Herrmann for San Carlos Apache Tribe
- Steve Titla observing for San Carlos Apache Tribe
- Susan Montgomery for the Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- John Habib for BHP
- Kaitlyn Smith for American Smelting and Refining Company (ASARCO)
- Mark A. McGinnis for Salt River Project (SRP)
- Charmayne Staloff for the United States in its capacity as Trustee for Indian Tribes and Maggie Woodward for the United States Proprietary Agencies (US)
- Kimberly R. Parks for the Arizona Department of Water Resources (ADWR)
- Carla A. Consoli observing for the Arizona Chapter of the Nature Conservancy

- Brett Stavin observing for Tonto Apache Tribe
- Brian Heiserman observing for the St. David Irrigation District
- Katya M. Lancero observing for the Navajo Nation

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

The Court explains the process and the purpose of this litigation and states that the property owners shall feel free to ask any questions they have.

Mr. Barajas asks the Court what will be decided at this hearing and if the property owners will potentially lose their water rights.

The Court explains that technically the landowners do not have a water right at the moment because one of the two wells are in the subflow zone of the San Pedro River and it is very likely that the well is pumping river water and not ground water. The river water needs to be allocated appropriately amongst the property owners who have a potential right to that river water.

Further, Mr. Barajas asks if there is a certain depth for the well that would be in the river water.

The Court states that it is possible that Mr. Barajas would not be pumping river water, but that will depend on the geology of the well.

Further, Mr. Barajas states that the well on his property ending in 002Z with a depth of around 200 feet has been decommissioned for over three years. A new well has been drilled on the other side of his property and is just over 1200 feet. The registration number for the new well is 55-237435.

Mr. Barajas states that he is interested in pursuing potential water rights.

Nancy Luyten states that she is using water for residential purposes only from a well located on the center of her property (registration number 20830002G).

Doris Weaver is using water from a well on the south part of her property.

The Court advises the property owners that depending on the dates the wells were put in, some of them may have to get later water rights. The Court requests assistance from ADWR to see if any of the new wells can be connected with any past filings in the WFR.

Kimberly Parks believes it will be helpful to meet with the property owners before preparing an amended WFR to see if there is any missing paperwork. The Court explains basis of right to the property owners.

ADWR will reach out to the property owners/claimants to set up an online meeting.

For the reasons set forth on the record and without objection,

IT IS ORDERED that ADWR shall meet with the property owners by **November 8, 2024**. ADWR shall then provide a status report to the Court **within two (2) weeks** from the date of the meeting.

The property owners provide their email addresses on the record.

The Court further explains the process of determining these water rights.

9:33 a.m. Hearing concludes.

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

LATER:

Arizona law requires the Adjudication Court to determine the nature, extent and relative priority of the rights of individuals and entities to use waters of the Gila River system and source, which includes surface water and certain subsurface water referred to as “subflow.” Subflow is water that flows underground through gravel and sand, but it exists so close to a surface stream that it is actually a part of that surface stream, rather than a different groundwater source.

To pursue water rights, whether surface or subflow, a property owner must file a Statement of Claimant and present to the Court evidence of the existence of a water right on their property. This evidence may include the WFR. If the property owner proves to the Court the existence of a water right on their property, the Court will recognize enforceable water rights in a “Final Decree.” ARS § 45-257(B).

Objections for this contested case can be found on the General Stream Adjudication website under “Active Cases” at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-1508-Combined-Objs-for-web.pdf>

Documents prepared by the Arizona Department of Water Resources (ADWR) as part of the November 1991 Hydrographic Survey Report (“HSR”) and the April 2014 Revised Subflow Delineation for the San Pedro River can be found on the ADWR website at:

<https://www.azwater.gov/adjudications>

Parties wishing to move forward with historical water rights claims on their property must ensure Statement of Claimants are current and that documentation of the reason the claim to the water is legally valid, also known as the “basis of right,” is presented to the Court. Additionally, claimants must be able to document the use of the water had not been suspended for any period of five (5) successive years since the use began.

1) Statement of Claimants (SOCs)

A SOC is a landowner’s or lessee’s (“claimant’s”) written statement to the Court that provides details about their water right claim. This claim to use public water is filed with the Arizona Department of Water Resources (“ADWR”). Although a water right generally remains attached to the land, the SOC must reflect the current claimant’s name and contact information as well as any changes to the original claim. The SOC as filed does not list current property owners or lessees. To update an SOC, parties may make an SOC amendment, obtain a SOC assignment from the original claimant, or file a new SOC for their use. See Ariz. Rev. Stat. §§ 45-254. Forms may be found on ADWR’s website at:

<https://www.azwater.gov/adjudications/statement-claimant-new-use-summons-forms>

2) Basis of Right

To obtain a water right, a claimant must also provide a “basis of right.” A basis of right is a document filed with ADWR either registering a water right, applying for a permit to appropriate water, or applying for a stockpond claim of right. See Arizona Revised Statutes (“Ariz. Rev. Stat.”) §§ 45-182(A), 45-152(A), 45-273.

If a claimant proves that the water right claimed was initiated prior to June 12, 1919, they do not need to file an “application for a permit to appropriate,” but must present a statement of claim registering their claimed water right and filed prior to, (90 days before the publication of the San Pedro HSR). See Ariz. Rev. Stat. §§ 45-171, 45-182(A). *Note that a statement of claim is a different document than a statement of claimant.*

ADWR can help the current property owners determine if former Claimants properly registered the potential water rights claimed on the SOC’s for this contested case. If a claimant either cannot prove that the water right claimed was initiated prior to June 12, 1919, or cannot present a statement of *claim* filed prior to August 22, 1991, the claimant must file either an “application for a permit to appropriate public water” Ariz. Rev. Stat. §§ 45-152(A).

Blank forms for the application may be found on the ADWR website at:

<https://www.azwater.gov/surface-water/surface-water-forms-and-documents>.

Because of the time and cost involved in pursuing an “application for a permit to appropriate public water” or an “application for a stockpond claim of right,”

claimants should first gather as much evidence as possible to determine which, if any, of their water rights claims are for water uses initiated prior to June 12, 1919, and described in a timely filed statement of *claim*.

Federal land entry case files (e.g. homestead proofs and affidavits) may be useful for proving historical farming and grazing activity on your land. Resources for finding land entry filings are listed below:

- Federal land patents may be found here:
<https://glorerecords.blm.gov/search/default.aspx>
- Pre-1908 homestead proofs may be accessed from a physical FamilySearch location. See <https://locations.familysearch.org/en/search> for more information.
- Any other land entry case files can be ordered using the following form:
<https://www.archives.gov/forms/pdf/natf-84.pdf>.

While it is not necessary, Claimants are free to seek their own legal counsel at any time should they decide to do so. In addition, The Arizona Adjudications Project is taking applications to provide free, limited legal representation in the adjudication. The team can help claimants who are not already represented by an attorney. You can apply for assistance here:

<https://law.arizona.edu/academics/clinical-programs/natural-resource-use-management-clinic/arizona-adjudications-clinic>.

To contact the University of Arizona Adjudications Project call (520) 621 6722 or via email at: law-azadjudicationsproject@arizona.edu.

To contact ADWR regarding application forms and processing procedures please call 1-866-246-1414, email smitchell@azwater.gov, or visit <https://www.azwater.gov/adjudications>.

To contact the Office of the Special Water Master please call (602) 372-4115.