

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/04/2021

SPECIAL WATER MASTER SUSAN WARD HARRIS

In re: The General Adjudication of All Rights To Use Water in the Gila River System
and Source

Contested Case No. W1-11-2726

Contested Case Name In Re David and Fay Gard

In Re: Status Conference

CLERK OF THE COURT

L. Brown

Deputy

FILED: 11/15/2021

MINUTE ENTRY

Central Court Building- Courtroom 301

1:45 p.m. This is the time set for a Status Conference re In Re David and Fay
Gard before Special Master Susan Ward Harris.

The following attorneys and parties appear via Court Connect/ Microsoft Teams
and via telephone:

- Mark McGinnis and Michael Foy on behalf of Salt River Project (“SRP”)
- Kimberly Parks, Michael Lindstrom, and Leandra Marshall on behalf of
Arizona Department of Water Resources (“ADWR”)
- Lauren Mulhearn observing on behalf of the Tonto Apache Tribe
- Joseph Sparks on behalf of San Carlos Apache Tribe
- Brad Pew on behalf of ASAARCO
- Phyllis Tharp and Robert Hammett

- Joel and Donna Quisenberry
- Robin Interpreter on behalf of the Yavapai Apache Nation
- Tom Murphy on behalf of Gila River Indian Community
- John Burnside on behalf of BHP Copper

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

The Court address Ms. Tharp and Mr. Hammett regarding their claim for domestic and irrigation use. Your domestic use appears to be from a well that you put in after 1991 which would be after ADWR prepared its report in this case. It also appears that water comes from a well that is outside the subflow zone. You have also filed a statement of claimant for irrigation use from a well that was installed at the time of an investigation that ADWR said was not in use at the time of its investigation in the late 1980's or early 1990's. At that time ADWR found no water use on your property. What is the priority date you are looking for on your claims?

Ms. Tharp states that we only got involved in this after we were sent a notice that we were to appear at that original court time. We had never applied for the irrigation well to be put in our name. We processed that and went through the county and paid our money and was told that we now have the rights to that irrigation well if we wanted to use it. The well on our property is not in use but we applied for these rights sent our money and our papers in and was told we have the rights to that well if we want to use it.

The Court states registering your well says you have the right to use a well, it doesn't necessarily mean that you have the right to use the water. I realize that sounds like a fine distinction. What we are doing in this adjudication is going through each person who is claiming the right to use water and adjudicating their right. If the water has not been put to use at this point, there is nothing we can do.

Mrs. Tharp states does that mean at a future date if we wanted to use the well then, we would start this process. Or if future owners wanted to use that irrigation well.

The Court asks Ms. Parks if these claims 39-18179 and 39-18178 that Phyllis Tharp and Robert Hammett have filed should be the subject of San Pedro II.

Mrs. Parks states I would agree.

The Court states Ms. Tharp and Mr. Hammett before we can adjudicate your claimed rights, ADWR needs to prepare a report and only after that

report is filed can the Court adjudicate those claims.

Ms. Tharp asks if we have no interest in irrigating, we do not need to do anything.

The Court states if you are not using water you do not need to do anything.

The Court states the domestic well is outside the subflow zone so that means it is presumed that you are pumping ground water.

The Court explains the cone of depression that the well may be creating and advises that it may extend into the subflow at some point. If that happens then the well will be pumping appropriable water and not just groundwater. Right now, ADWR is working on developing on a test that it can use to see if a well's Cone of Depression is pumping from the subflow zone. You will no longer participate in this case because no action can be taken on your domestic well because ADWR has not investigated the domestic well. They will be the subject of a later investigation.

Mrs. Tharp states they were just contacted to be in this and that is all we knew. We tried to do everything possible to get corrected so now we are done with this one.

The Court address the Mr. and Mrs. Quisenberry. You have applied for domestic and irrigation usage and your wells are in the subflow zone and you are presumed to be pumping the river at this point. When we last talked there was discussion that you needed to get documents to show a pre-1919 priority date. Have you had any luck in getting those documents?

Mrs. Quisenberry states no, I contacted them and was notified by both that it would take three weeks to get back to me. After three weeks I contacted them again and was told that they are closed right now because of Covid and do not have access to those documents.

The Court states that sounds like a very common problem that we are encountering with the National Archives. Have you prepared a map that shows that portion of your land that you are irrigating as pasture?

Mrs. Quisenberry states well we have been in a couple of conferences with ADWR and the opposing parties and I wrote a statement and sent it to them. In my letter I provided a few links to them to a map that was published in 1885 of all the families that lived in Cochise County at the time. After a few conferences with ADWR we were given some names of

the water rights that had previously been on our well. Both our domestic and our irrigation well are in one hole. We have clarified that with ADWR. I believe we have gotten the GPS coordinates that they need. I thought I had provided the Court with the hand drawn map as we were directed to do. The meeting was set up with ADWR and Mr. Hillstrom provided a map and there was further communication and we identified on that map where our well was located. I believe we have met the requirements of the Court in providing a map and to the best of our abilities we have provided the historical information on this property.

The Court states we have two separate issues. The first is the need to acquire historical documents from National Archives. What I will do is schedule this case for another status conference months from now to give you time to request the documents. Everyone is having that problem. The second issue is the map. What we have done in the past is the landowners prepare a map and then provides GPS coordinates at the corners of the irrigated land so that it can be identified.

Mr. Sparks states we have not seen that map and so we have not received the email either. We are uninformed at this time about the status of documents that have been provided for our review.

Mr. Foy states I have seen the map that you are referring to. It is a good start if we are to reach a stipulated abstract, you probably want something a little bit more detailed. With respect to this case, Mrs. Quisenberry has gone about as far as she can go without getting documentation from the National Archives. Yesterday evening Mrs. Quisenberry sent additional correspondence that included some additional documentation. Because we just received it, we have not had a chance to review it yet and determine whether it is adequate to support the claimed priority date but there has been an effort to provide documentation. One option is to stay the case pending the National Archives re-opening. Another would be to give the objecting parties an opportunity to review the evidence the Quisenberrys have provided to determine if that is enough to stipulate to the claim priority date.

The Court states are you looking at the same map that I have? If we went with that map and the Quisenberrys' GPS coordinates, would that satisfy SRP's position with regard to place of use?

Mr. Foy states if you were to layer GPS coordinates on top of that map - I think it is a little rougher than what we are used to seeing in abstracts, but if you add the GPS coordinates, I think it cures that.

The Court asks Ms. Parks to prepare an 8 x 10 map that shows the irrigated area with the township range section and quarter quarter quarter

sections provide it to the Quisenberrys and then they can add the GPS coordinates.

Mrs. Quisenberry asks the Court how many GPS points around the circumference of our pasture is required.

The Court states there is no hard and fast requirements. The goal is that we don't have a dispute later about what land you have the right to irrigate.

Mr. Pew states the approach that the Court took, and the map sounds reasonable, and we are happy to review the materials that we received yesterday or wait for any additional materials from the National Archive, whichever the Court prefers.

Mr. Burnside states he had no further comments.

Mrs. Mulhearn states she has nothing to add.

Mrs. Interpreter states she has nothing else to add.

No further comments from counsel.

The Court address Mrs. Quisenberry. Everyone seems to agree that once you get the map from ADWR in about thirty days that you put the GPS coordinates on it and distribute it to the parties and that will give them time to review the document. It appears that you have gone about as far as you can until the National Archives opens and begins accepting document requests. I will schedule another status conference in about four months to give you the time to get the documents back.

Mrs. Quisenberry states that I am dealing with California and not sure if the covid restrictions there will be different than the Federal governments.

The Court states that I have been told that Riverside is open, but Riverside only has documents that are patents and documents that were rejected. So, you may be shipped back to Washington D.C. at some point.

2:09 p.m. Matter concludes.

LATER:

IT IS ORDERED that Phyllis Tharp and Robert Hammett are dismissed from this case and shall be removed from the court approved mailing list. There is no current use of the well that ADWR referred to as W02 in Watershed File Report 113-12-DD-001 located in NENWSW section 32 T13S R20E and reported as “unused”. The Statements of Claimant filed by Phyllis Tharp and Robert Hammett shall be the subject of San Pedro HSR II.

IT IS FURTHER ORDERED that Arizona Department of Water Resources shall provide a map for the Quisenberrys to identify the land for which water is claimed for irrigation with GPS coordinates by **December 6, 2021**.

IT IS FURTHER ORDERED that this case is stayed pending the National Archives’ acceptance of requests for documents.

NOTE: All court proceedings are recorded digitally and not by a court reporter. The parties or counsel may request a CD of the proceedings. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

A copy of this order is mailed to all parties on the Court-approved mailing list for this contested case.