

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Contested Case No. W1-11-1872

CONTESTED CASE NAMES: *In re Branson L. and Geneva Sherman*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: Arizona Department of Water Resources directed to map one well in the northeast quarter of section 34 T17S R20 with respect to the subflow zone. Status conference set to determine proceedings necessary to address potential water rights for irrigation uses.

NUMBER OF PAGES: 13

DATE OF FILING: November 1, 2018

This contested case involves potential water rights for two irrigation uses in the northeast and southeast quarters of section 11 T17S R20E identified by the Arizona Department of Water Resources in Watershed File Report No. 112-17-BAA-038 (WFR). The WFR listed the

1 sources of water as one well and a diversion from the San Pedro River into the Pomerene Water
2 Users Association Canal. A copy of the WFR is attached as Attachment A. Franklin T. East filed
3 one applicable adjudication filing which is Statement of Claimant 39-4085. The records of the
4 Arizona Department of Water Resources do not show that the Statement of Claimant has been
5 assigned to a successor landowner. A copy of the map prepared by the Arizona Department of
6 Water Resources for the WFR is attached as Attachment B. The purpose of this case is to resolve
7 the five objections to the potential water rights to the extent that the current landowners intend to
8 pursue them.

10 **Background**

11 Until October 5, 2018, this case was consolidated and a part of that group of cases
12 known as *In re Pomerene Water Users Association*, contested case no. W1-11-1676. In that
13 case, the court scheduled a status conference for June 28, 2017 in part to identify the proper
14 parties. A copy of the court's order was mailed, among others, to Russell and Norma Sherman,
15 and Jesse and Kelly Merrill. At the status conference, counsel for the Pomerene Water Users
16 Association was given until October 2, 2017 to provide documentation concerning the continuing
17 authority of Pomerene Water Users Association to act. No landowners appeared at the status
18 conference.

20 By order dated July 26, 2017, the court directed the owners of land for which Arizona
21 Department of Water Resources had identified as places of use for water diverted through the
22 Pomerene Canal to file new or amended statements of claimant if they desired to assert a claim
23 for a right to divert water through the Pomerene Canal for irrigation use. A second status
24 conference was set for October 18, 2017. A copy of the order was sent, among others, to Branson
25 Sherman c/o Russell and Norma Sherman and Jesse and Kelly Merrill. The public records of
26
27
28

1 Arizona Department of Water Resources do not contain a statement of claimant filed by Branson
2 Sherman or Jesse and Kelly Merrill.

3 At the status conference held on October 18, 2017, the newly elected board of the
4 Pomerene Water Users Association appeared along with its counsel. The court directed the
5 Pomerene Water Users Association to file a list by December 29, 2017 that identified those
6 landowners who were members by the Pomerene Water Users Association and whose interests
7 would be represented by the Pomerene Water Users Association in this adjudication of water
8 rights. The court also set a third status conference for September 6, 2018. A copy of the order
9 was sent to Russell and Norma Sherman, Jesse and Kelly Merrill. On December 21, 2017, the
10 Pomerene Water Users Association timely filed a list of 26 landowners, which included Jesse and
11 Kelly Merrill.
12

13 On August 31, 2018, Pomerene Water Users Association filed a Notice of Termination.
14 At the third status conference, counsel for the Pomerene Water Users Association provided a list
15 of its members who joined the St. David Irrigation District and those members, including Jesse
16 and Kelly Merrill, who declined to join the St. David Irrigation District. Branson Sherman was
17 not included on either list.
18

19 By order dated October 5, 2018, the cases previously consolidated into a single case
20 known as *In re Pomerene Water Users Association* were separated into individual cases. As a
21 result, the potential water rights analyzed in the WFR will be considered in this separate case.
22

23 24 **Landowners**

25 The first step to adjudicate the water rights identified by the WFR is to identify the current
26 landowners involved in this case. According to information provided by the Cochise County
27 Assessor's Office, the land included in the WFR consists of tax parcels 20843012A, 20843016A,
28

1 and 20843016C as shown on Attachment C. The Cochise County Treasurer's Office reports the
2 following individuals as the owners of the tax parcels:

Landowner	Tax Parcel
Jesse T & Kelly J Merrill	20843012A
Branson L Sherman	20843016A
Jesse T & Kelly J Merrill	20843016C

3
4
5
6
7
8 The second step is to determine whether the well listed in the WFR is located in the
9 subflow zone. The third step is to determine whether the landowners intend to pursue claims for
10 potential water rights described in the WFR, and, if so, to schedule appropriate procedures to
11 adjudicate those claims.

12 Accordingly,

13
14 **IT IS ORDERED** that by **December 3, 2018**, the Arizona Department of Water Resources
15 shall file a map that shows Well 1 identified in the WFR relative to the boundaries of the subflow
16 zone.

17
18 **IT IS FURTHER ORDERED** that a telephonic status conference shall be held on
19 **December 19, 2018** at 10:30 a.m. to ascertain whether the landowners intend to pursue any of the
20 potential water rights set forth in the WFR.

21 Instructions for telephonic participation:

22 Dial: 602-506-9695 (local)

23 1-855-506-9695 (toll free long distance)

24 Dial Collaboration (conference) Code 357264#
25
26
27
28

1 Failure to participate at the status conference or file a statement of claimant with the Arizona
2 Department of Water Resources may result in no adjudication of the potential water rights
3 associated with the land described in the WFR.
4
5
6

7 
8 SUSAN WARD HARRIS
9 Special Master
10
11

12 On November 1, 2018, the original of the foregoing was
13 delivered to the Clerk of the Maricopa County Superior
14 Court for filing and distributing a copy to the persons listed
15 as Attachment D.
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

LAND OWNER	WATERSHED FILE REPORT NUMBER
-----	-----
SHERMAN, BRANSON L. & GENEVA	112-17-BAA-038

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES *WI-11-1972*

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION	TWNP	RNGE	CLAIM DATE	DIVERSION LOCATION SECTION	TWNP	RNGE
39-0004085	QUE.RECD	IRRIGATION DOMESTIC		SWNE34	160S	200E	1950	NE34	160S	200E

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
39-0004085	IRRIGATION DOMESTIC	IRRIGATION MUNICIPAL	WO1	IROO2

DIVERSIONS

DIV #	LOCATION SECTION	TWNP	RNGE	DIVERSION NAME	WATER SOURCE AND CLASSIFICATION
DO1	NWSENE36	170S	200E	POMERENE CANAL	SURFACE WATER: SAN PEDRO RIVER SHARED
WO1	NESWNE34	160S	200E	UNNAMED	GROUNDWATER : ZONE 2 SHARED

USES

PWR #	LOCATION SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
IROO1	NESE34	160S	200E	DO1	SURFACE WATER	1972	NO	
IROO2	SWNE34	160S	200E	WO1	GROUNDWATER : ZONE 2	1972	NO	

SHARED USES AND DIVERSIONS

** DIVERSION DO1 OPERATED BY THE POMERENE WATER USERS ASSOC. (FILE 112-17-89) SUPPLIES WATER TO PWRS IN THIS FILE.
 ** WATER FROM WO1 FOUND IN FILE (112-17BAA-62) IS USED IN THIS FILE

PWR SUMMARY

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	*APPARENT FIRST USE DATE*	DATE BASIS FOR DATE	WATER SOURCES AND CLASSIFICATIONS
IROO1	NONE	NONE	1972	1972 AERIAL PHOTO	SURFACE WATER: SAN PEDRO RIVER
IROO2	39-0004085	NONE	1972	1972 AERIAL PHOTO	GROUNDWATER : ZONE 2

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE	ACRES	CROP TYPE	EFF	WATER DUTY	ESTIMATED VOLUME	REMARKS
IROO1	MAX. OBSERVED REGIONAL	2.5	MULTI.-DBL.	46%	2.1 AF/AC	5.3 AFA	
	MAX. POTENTIAL	2.5	AVE. CROP	50%	5.4 AF/AC	13.5 AFA	
	MAX. OBSERVED REGIONAL	.8	ALFALFA	46%	7.3 AF/AC	18.3 AFA	
IROO2	MAX. OBSERVED REGIONAL	.8	PERM. PSTR	32%	9.9 AF/AC	7.9 AFA	
	MAX. POTENTIAL	.8	AVE. CROP	50%	5.4 AF/AC	4.3 AFA	
	MAX. POTENTIAL	.8	ALFALFA	32%	10.4 AF/AC	8.3 AFA	

FILINGS AND DECREES

FILING 39-4085 - A UNIFORM QUESTIONNAIRE WAS RECEIVED WHICH PROVIDED ADDITIONAL INFORMATION ABOUT WATER USES AND THE DIVERSION LOCATION.

DIVERSIONS

D1 - DIVERSION FROM THE SAN PEDRO RIVER INTO THE POMERENE WATER USERS ASSOCIATION CANAL.
W1 - WELL PROVIDES WATER FOR IRRIGATION USES.

USES AND RESERVOIRS

IR1 - IRRIGATED MULTIPLE-DOUBLE CROPS (PASTURE AND VEGETABLES).
IR2 - IRRIGATED PASTURE
DOMESTIC WATER USE IS SUPPLIED BY THE POMERENE DOMESTIC WATER USERS ASSOCIATION.

SHARED USES AND DIVERSIONS

W1 - WELL IS SHARED WITH W.F.R. #112-17-BAA-62.

PWR SUMMARY

FILINGS MADE BY THE POMERENE WATER USERS ASSOCIATION APPLY TO IRRIGATION USES (IR1) ON THIS PROPERTY. FOR MORE INFORMATION ON THE POMERENE WATER USERS ASSOCIATION, SEE THE MAJOR USERS REPORTS IN VOLUME 1.

LAND OWNER	ZONE 2 WELL REPORT NUMBER
-----	-----
SHERMAN, BRANSON L. & GENEVA	112-17-BAA-038

WELLS	WELL NAMES	WELL LOCATION			WATER USES SERVED	REMARKS
		SECTION	TWNP	RNGE		
-----	-----	-----	-----	-----	-----	-----
WO1	UNNAMED	NESWNE34	160S	200E	IROO2	W1-11-1872 SHARED

WATER USE NUMBERS	WATER USE LOCATION			*** APPARENT FIRST USE ***		APPAR. ANNUAL VOLUME USED	ACRES IRRIGATED
	SECTION	TWNP	RNGE	DATE	BASIS FOR DATE		
-----	-----	-----	-----	-----	-----	-----	-----
IROO2	SWNE34	160S	200E	1972	1972 AERIAL PHOTO	4.3 AFA	.8

APPLICABLE STATEMENTS OF CLAIMANT	APPLIES TO: WELLS	APPLIES TO: WATER USES
-----	-----	-----
39-0004085	WO1	IROO2

EXPLANATION

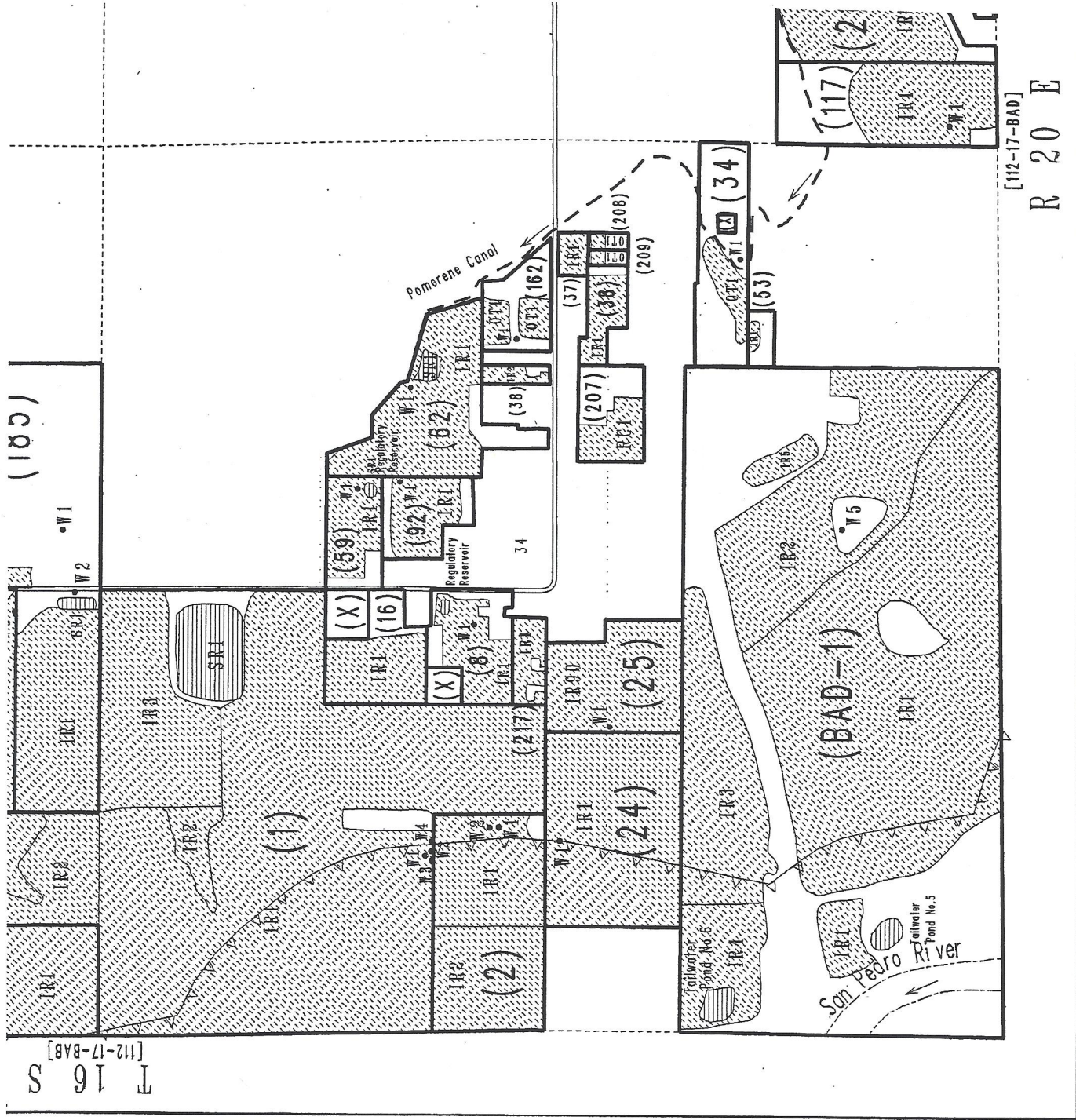
W1 - WELL PROVIDES WATER FOR IRRIGATION USES.

IR2 - IRRIGATED PASTURE.

** WATER FROM WO1 FOUND IN FILE (112-17BAA-62) IS USED IN THIS FILE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT B



(185)

W1

W2

Pomerene Canal

Regulatory Reservoir

Regulatory Reservoir (62)

(BAD-1)

Son Pedro River

Fallwater Pond No. 5

Fallwater Pond No. 6

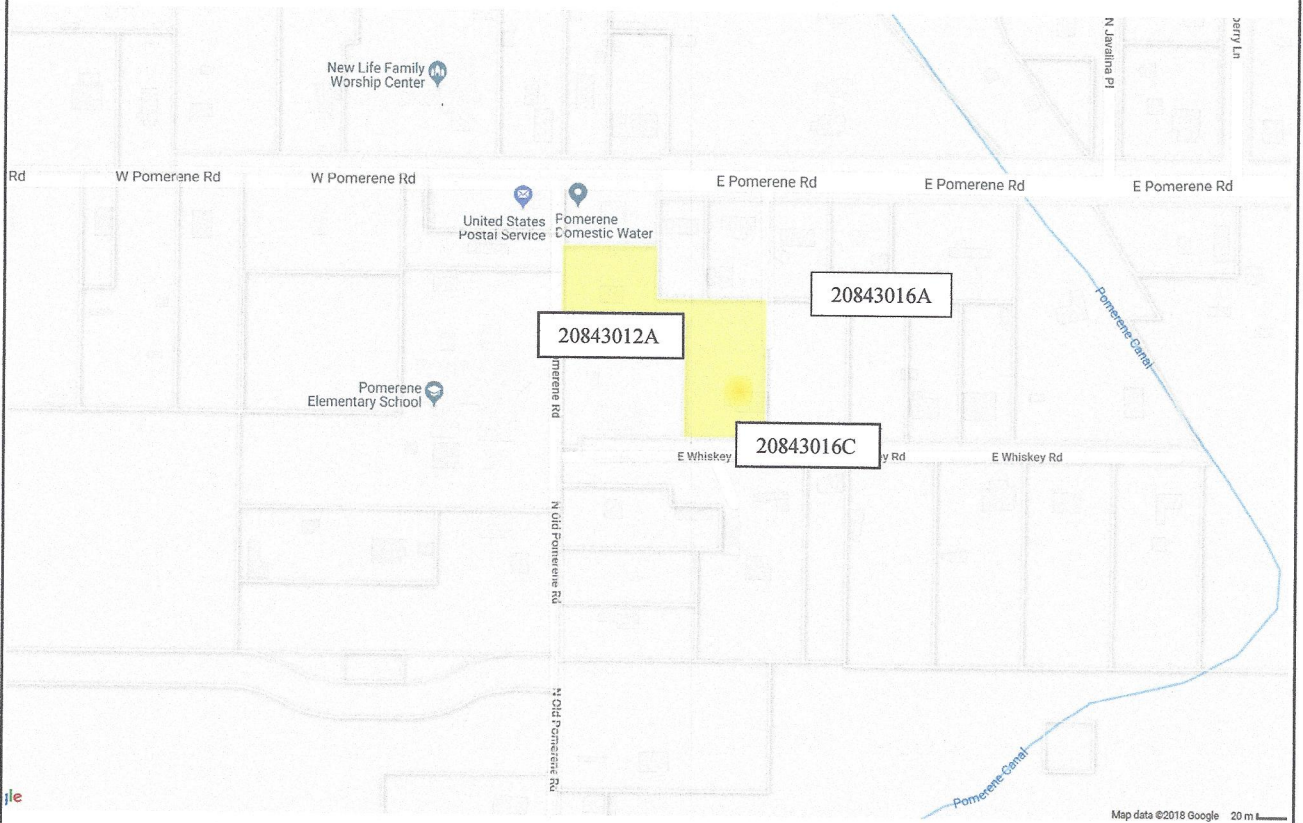
[112-17-BAD]

R 20 E

T 16 S
[112-17-BAB]

ATTACHMENT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ATTACHMENT D

1
2 Branson L Sherman
c/o Russell L and Norma J Sherman
3 P. O. Box 505
Benson, Az 85602

4 Franklin East
5 P. O. Box 44
Pomerene, Az 85627

6 Jesse T. & Kelly J. Merrill
7 P. O. Box 154
Pomerene, Az 85627

8 Joe P. Sparks and Laurel A. Herrmann
9 The Sparks Law Firm, P.C.
7503 First Street
10 Scottsdale, Az 85251-4573

11 Kimberly R. Parks and Janet L. Miller
Arizona Department of Water Resources
12 P. O. Box 36020
Phoenix, Az 85067

13 L. J. Caster, B.J. Heiserman, B. J. Pew
Fennemore Craig, P.C.
14 2394 East Camelback Road Ste 600
Phoenix, Az 85016-3429

15 L. William Staudenmaier
16 Snell & Wilmer, L. L. P.
400 E. Van Buren St.
17 Suite 1900
Phoenix, Az 85004-2202

18 Linus Everling and Thomas L. Murphy
19 Gila River Indian Community
Office of the General Counsel
20 P. O. Box 97
Sacaton, Az 85147

21 Messers. Weldon, McGinnis, Heilman
22 Salmon, Lewis and Weldon Plc
2850 E. Camelback Road Ste 200
23 Phoenix , Az 85016

24 R. Lee Leininger and Andrew Guarino
U.S. Department of Justice
25 999 18th Street, South Terrace, Suite 37
Denver, Co 80202

26 S. Montgomery, R. Interpreter, J. Tomkus
27 Montgomery & Interpreter, Plc
3301 E. Thunderbird Road
28 Phoenix, Az 85032