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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. W1-11-3385

ORDER TO INITIATE CONTESTED
CASE

CONTESTED CASE NAME: *In re Elizabeth Hilliard*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report

DESCRIPTIVE SUMMARY: Contested case W1-11-3385 is initiated and status conference set for **September 12, 2019 at 1:40 p.m.**

NUMBER OF PAGES: 14

DATE OF FILING: August 6, 2019

This Order initiates a contested case to consider the claims and resolve objections to Watershed File Report 115-05-AC-006 (“WFR”) published in the Final San Pedro River Watershed Hydrographic Survey Report (1991). The WFR identified a potential water right for a domestic use and reported evidence of irrigation on land described in the WFR as NWNE section 34 of Township 6S Range 19E of Graham County. The WFR located two wells that

1 supplied the identified water uses: W01 and W02 located NENWNE section 34 T6S R19E.¹
2 Arizona Department of Water Resources has determined that both wells are located in the
3 subflow zone. A copy of the watershed file report is attached as Attachment A. A copy of the
4 map prepared for the WFR is attached as Attachment B.

5
6 **Landowners**

7
8 The WFR identified the landowner of 115-05-AC-006 as Ronnie L. and Elizabeth F.
9 Hilliard. The public records of the Graham County Recorder's Office show that on July 26,
10 1976, a Decree of Dissolution of Marriage was filed in the Pima County Superior Court part of
11 which stated property described as "The E1/2 of the E1/2 of the NW1/4 of the NE1/4 of
12 Section 34, Township 6, South of Range 19..." shall be assigned to the wife, Elizabeth
13 Hilliard, as her "sole and separate property." On July 7, 2003, Elizabeth F. Hilliard conveyed
14 the land to John P. Franzone Jr. by Warranty Deed under fee number 2003-04368. According
15 to the public records of the Graham County Assessor's Office, John P. Franzone Jr. is the
16 current owner of the land as tax parcel no. 110-14-011. A copy of the current tax parcel map is
17 attached as Attachment C. The public records of Arizona Department of Water Resources do
18 not show that John P. Franzone Jr. has filed a statement of claimant for a water right.

19 **Claimants**

20 In support of the potential water rights, the WFR identified three Statements of
21 Claimant (SOC): 39-12545, 39-2579 and 39-5516.

22 **1. 39-12545**

23 Elizabeth Hilliard filed SOC 39-12545 claiming 0.1 and 0.5 acre-feet annually for
24 domestic and stockwater uses, respectively, on land described as NWNE section 34 T6S
25 R19E. The public records of ADWR do not show that SOC 39-12545 has been assigned.
26

27
28 ¹ The map for the WFR places W02 in section 35 T6S R19E, but the WFR lists W02 as located in section 34 T6S R19E.

1 **2. SOC 39-2579.**

2 Delta Bryce filed SOC 39-2579 claiming 13.8 acre-feet for irrigation and domestic use
3 on land located in the NWNE of section 34 T6S R19E of Graham County. A death certificate
4 was recorded on 2002 with the Graham County Recorder for Delta Bryce. On September 26,
5 2002, the trustees of the Delta Welker Bryce Living Trust conveyed the following land to
6 Greta Bergan and Logene Allen:
7

8 The Northwest Quarter of the Northeast Quarter of Section
9 34, Township 6 South, Range 19 East, Gila and Salt River
10 Meridian, Graham County, Arizona; EXCEPTING therefrom
11 the following described tract of land, to wit: The East half of
 the East Half of the Northwest Quarter of the Northeast
 Quarter of said Section 34.

12 In 2016 a land survey was filed which labelled land owned by John P. Franzone and by Greta
13 Bergan and Logene Allen as trustees of their respective trusts. A copy of the land survey is
14 attached as Attachment D. The public records of ADWR do not show an assignment of SOC
15 39-2579.
16

17 **3. SOC 39-5516**

18 The Defenders of Wildlife filed SOC 39-5516 claiming 180,000 gallons per year
19 diverted from surface water for domestic purposes on land described as NWNW section 35
20 T6S R19E. The public records of ADWR include an assignment of SOC 39-5516 to The
21 Nature Conservancy, among other SOCs, on June 10, 1988. The WFR lists SOC 39-5516 as
22 one of the applicable adjudication filings for potential water right 115-05-AC-006-IR090.
23 The WFR notes that the source of water for 115-05-AC-006-IR090 is a well (Well 02) that is
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1 shared with Watershed File Report 115-05-AC-005. Well 02 is located in NENWNE section
2 34 T6S R19E.²

3 The Watershed File Report 115-05-AC-005 also includes SOC 39-5516 as an
4 applicable adjudication filing for a potential water right ending in IR094, characterized as a
5 discontinued irrigation use. The source of the water for the potential water right, according to
6 the watershed file report, is Well 02 that is shared with the land included in the WFR at issue.
7
8 *In re Arizona Chapter of the Nature Conservancy – Aravaipa Creek I*, contested case no. W1-
9 11-3384 was initiated to consider watershed file report 115-05-AC-005.³ In 2018, The
10 Nature Conservancy filed a Consolidated Abstract of Amendments to TNC Statements of
11 Claimant in that case. It neither asserted a claim for an irrigation use on the land included in
12 watershed file report 115-05-AC-005 nor referenced SOC 39-5516. *See also* The Arizona
13 Chapter of the Nature Conservancy’s Response to the Request of the Special Master’s
14 Request for Additional Information, filed December 3, 2018 in contested case no. W1-11-
15 3377. Thus, it does not appear that SOC 39-5516 is an applicable adjudication filing relevant
16 to this case.
17

18
19 **IT IS ORDERED:**

20 1. Contested Case. This contested case shall be known as *In re Elizabeth Hilliard*
21 and it will address Statements of Claimant and objections that were filed regarding the
22 watershed file report 115-05-AC-006 published in the Final San Pedro River Watershed
23 Hydrographic Survey Report (1991). Copies of objections can be found under the case name
24

25 _____
26 ² The map for the WFR places W02 in section 35 T6S R19E, but the WFR lists W02 as located in section 34 T6S R19E.

27 ³ The case has now been consolidated with *In re Arizona Chapter of the Nature Conservancy – Agro Land*,
28 contested case no. W1-11-3382

1 and number on the following website:
2 [http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)
3 [asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)

4 2. Litigants. The litigants in this contested case are the Claimants, the current
5 landowners, all persons who filed objections to the listed watershed file reports who are listed
6 on Attachment E, and claimants who are allowed to intervene by order.

7
8 3. Court-Approved Mailing List.

9 A. The initial Court-approved mailing list for this case shall include all
10 persons listed on Attachment E to this order. The list may be modified only by
11 filing a motion with the Special Master to amend the Court-approved mailing
12 list. Litigants are responsible for using the current Court-approved mailing list.

13 B. A copy of any pleading filed with the Clerk of the Maricopa County
14 Superior Court in this case shall be served upon each person listed on the Court-
15 approved mailing list.

16 C. Claimants wishing to be added or removed from the mailing list shall file
17 a motion with the Special Master. Parties allowed to intervene will be
18 automatically added to the mailing list.

19
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21 4. Courtesy Email List.

22 The Special Master's office will email courtesy copies of orders and minute
23 entries entered in this case to persons listed on Attachment E. Requests for
24 inclusions on the email list should be sent to Barbara Brown at
25 brownb099@superiorcourt.maricopa.gov.

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27 5. Order to Show Cause. The Nature Conservancy shall be prepared to show cause
28 that SOC 39-5516 should not be dismissed.

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ATTACHMENT A

LAND OWNER	WATERSHED FILE REPORT NUMBER
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HILLIARD , RONNIE L. & ELIZABETH F.	115-05-AC-006

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES *W1-11-3385*

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION TWP RNGE	CLAIM DATE	DIVERSION LOCATION SECTION TWP RNGE
36-0037258		DOMESTIC	.55	NWNW35 060S 190E	1880	NWNW35 060S 190E
39-0002579	QUE.RECD	IRRIGATION	13.80	NWNE34 060S 190E	1919	NWNWNE34 060S 190E
		DOMESTIC STOCK				
39-0005516		DOMESTIC	.55	NWNW35 060S 190E		NWNW35 060S 190E
39-0012545		DOMESTIC STOCK	.10 .50		1970	

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
36-0037258	DOMESTIC	NOT APPLICABLE	WO2	
39-0002579	IRRIGATION	DISCONTINUED	WO1	DMOO1, IRO90
	DOMESTIC STOCK	DOMESTIC INCIDENTAL		
39-0005516	DOMESTIC	NOT APPLICABLE	WO2	
39-0012545	DOMESTIC STOCK	DOMESTIC INCIDENTAL	WO1	DMOO1

DIVERSIONS

DIV #	LOCATION SECTION TWP RNGE	DIVERSION NAME	WATER SOURCE AND CLASSIFICATION
WO1	NENWNE34 060S 190E	UNNAMED	GROUNDWATER : CATALOGUED SHARED
WO2	NENWNE34 060S 190E	UNNAMED	GROUNDWATER : ZONE 1 OF THE ARAVAIPA CREEK SHARED

USES

PWR #	LOCATION SECTION TWP RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
DMOO1	NENWNE34 060S 190E	WO1	GROUNDWATER : CATALOGUED		NO	
IRO90	NWNE34 060S 190E	WO2	GROUNDWATER : ZONE 1	1935	NO	

SHARED USES AND DIVERSIONS

** WATER FROM WO1 IS SHARED WITH THESE ADDITIONAL FILES:
115-05-AC-7

** WATER FROM WO2 FOUND IN FILE (115-05-AC-5) 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
DMOO1	39-0002579 39-0012545	NONE		GROUNDWATER : CATALOGUED
IRO90	39-0002579 39-0005516	36-0037258	1921 1921 STATE SURVEY	GROUNDWATER : ZONE 1 OF THE ARAVAIPA CREEK

PWR #	QUANTIFICATION TYPE	ACRES	CROP TYPE	EFF	WATER DUTY	ESTIMATED VOLUME	REMARKS
DM001							
IR090	REGIONAL	.6	NO CROP				SEE VOLUME 1 - GENERAL ASSESSMENT DISCONTINUED IRRG.

E X P L A N A T I O N

FILINGS AND DECREES

FILINGS 36-37258 & 39-5516 - CLAIM DOMESTIC USES WHICH DO NOT APPLY TO THIS PROPERTY.
 FILING 39-2579 - A UNIFORM QUESTIONNAIRE WAS RECEIVED WHICH DESCRIBED WATER USES ON THIS PROPERTY.

DIVERSIONS

W1 - A CATALOGUED WELL PROVIDES WATER FOR DOMESTIC AND STOCKWATERING USES.
 W2 - WELL PROVIDES WATER FOR IRRIGATION USES.

USES AND RESERVOIRS

DM1 - DOMESTIC USE.
 IR90 - DISCONTINUED IRRIGATION: DWR HAS DETERMINED THAT NO IRRIGATION HAS OCCURRED ON THIS PROPERTY IN THE LAST FIVE YEARS, BUT THERE HAS BEEN IRRIGATION IN THE PAST TEN YEARS BASED UPON A REVIEW OF HISTORICAL AERIAL PHOTOGRAPHY AND FIELD INVESTIGATIONS.

SHARED USES AND DIVERSIONS

W1 - WELL IS SHARED WITH W.F.R. #115-05-AC-7.
 W2 - WELL IS SHARED WITH W.F.R. #115-05-AC-5.

DISPOSITION OF LAND OWNER/CLAIMANT COMMENTS

A COMMENT WAS RECEIVED FROM THE LAND OWNER WHICH DESCRIBED THE WATER USES AND DIVERSIONS.

ATTACHMENT B

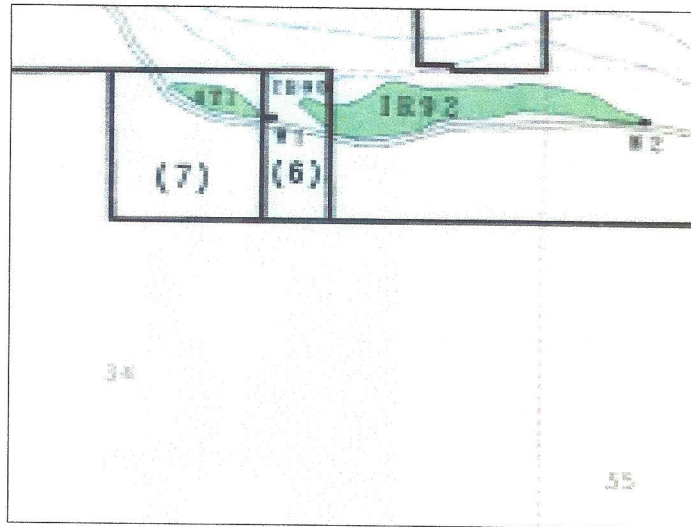


Figure 1. Land at issue in this case is labelled as (6).

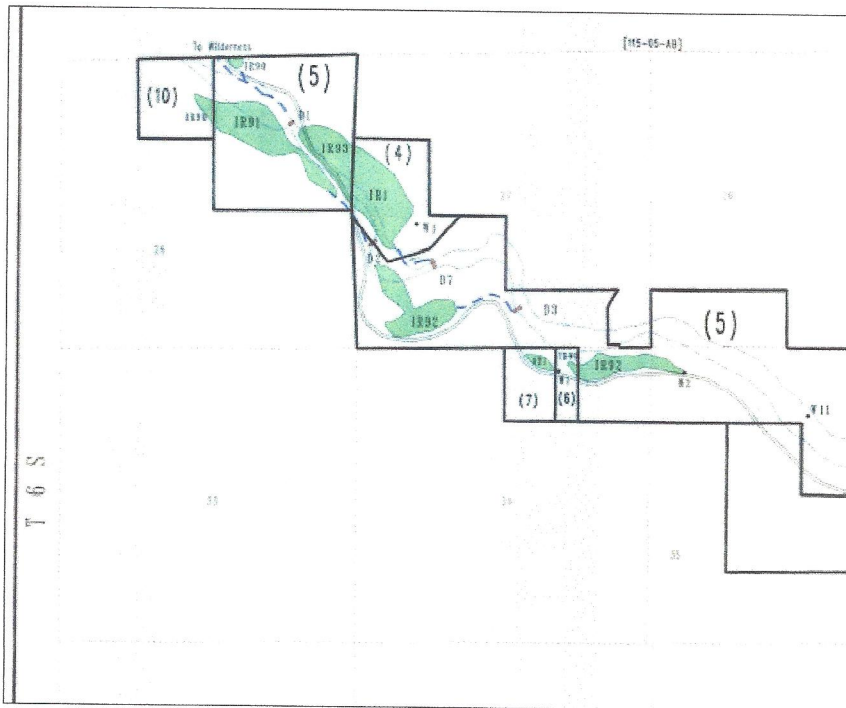
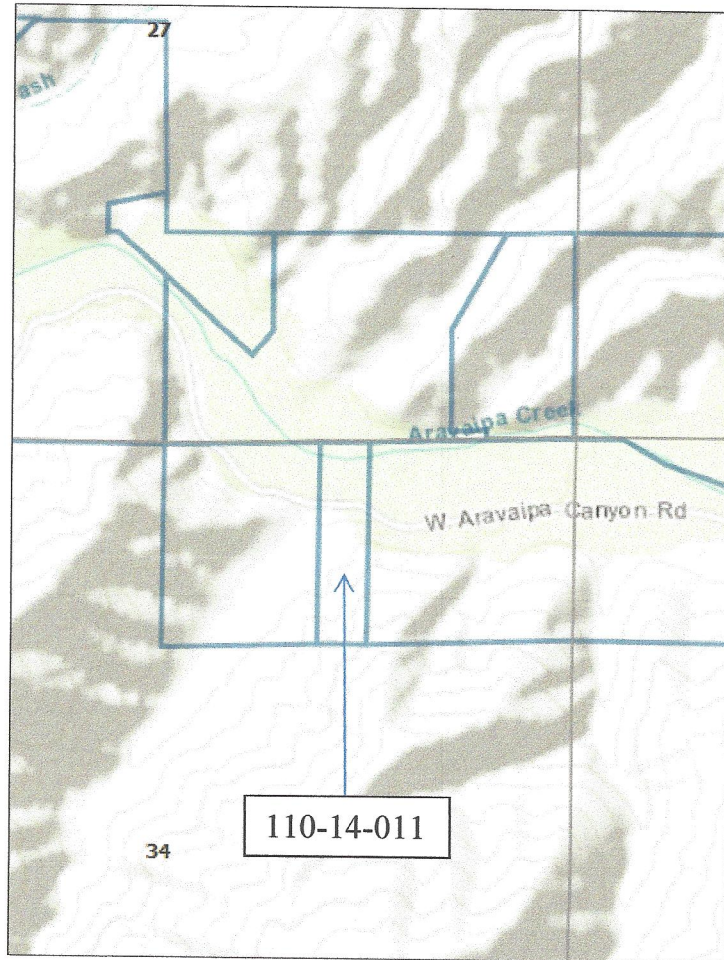


Figure 2. Land included in 115-05-AC-005 is labelled as (5) and the land shown in this case is labelled as (6).

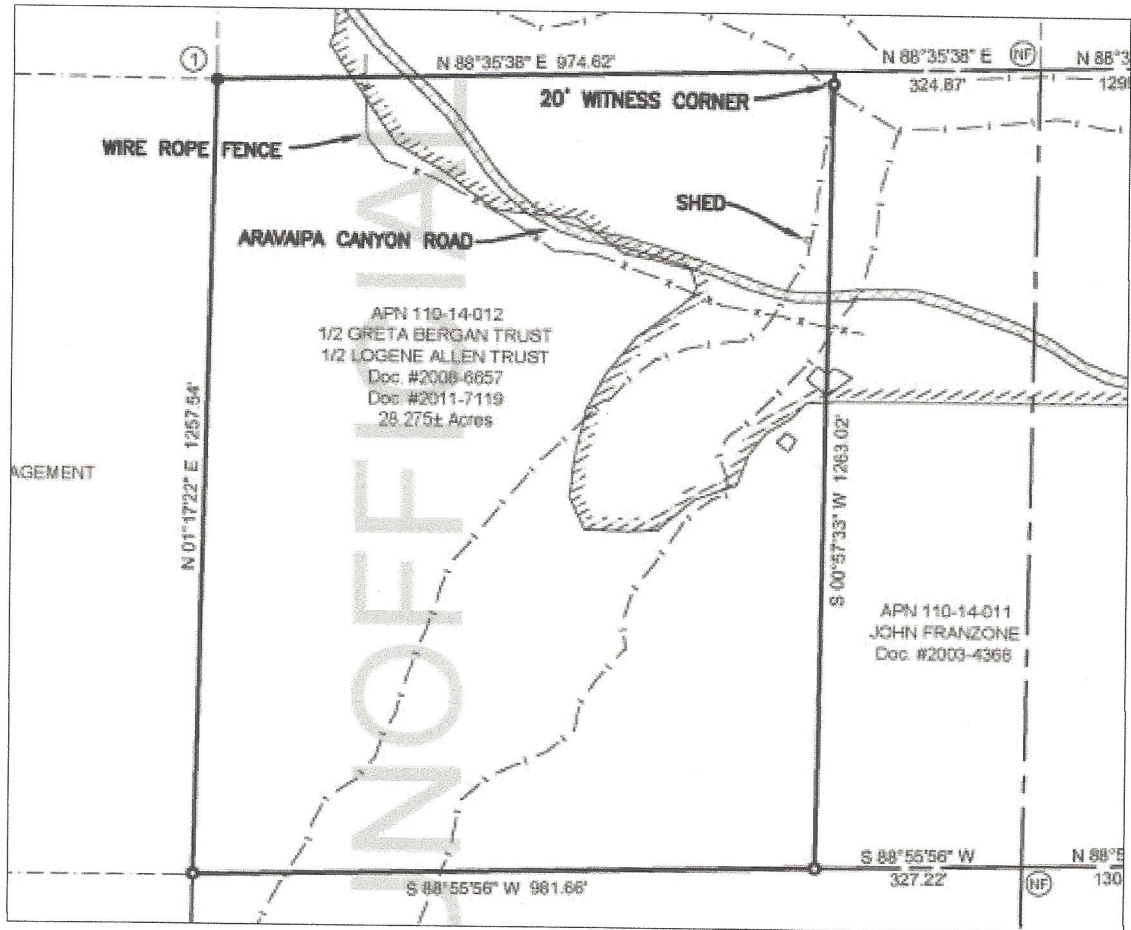
ATTACHMENT C

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ATTACHMENT D



ATTACHMENT E

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4 Arizona Department of Water Resources
Kimberly Parks
5 Janet L. Miller
6 P. O. Box 36020
Phoenix, AZ 85067

7 ASARCO Incorporated
8 Lauren J. Caster
9 Fennemore Craig, P.C.
2394 East Camelback Road
10 Suite 600
Phoenix, AZ 85016-3429

11 BHP Copper, Inc
12 C/O CT Corporation System
13 3800 North Central Ave. Ste. 460
Phoenix, AZ 85012

14 Clerk of the Superior Court
15 Maricopa County
Attn: Water Case
16 601 West Jackson Street
17 Phoenix, AZ 85003

18 Delta Bryce
322 Relation Street
19 Safford, AZ 85546

20 Elizabeth Hilliard
21 1314 W. Kleindale
Tucson, AZ 85705

22 Gila River Indian Community
23 Linus Everling and Thomas L. Murphy
24 Office of the General Counsel
P. O. Box 97
25 Sacaton, AZ 85147

26 Greta Bergan Trust
27 Logene Allen Trust
c/o Jan Rogers
28 6479 W Wahalla Ln.
Glendale, AZ 85308-7081

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Salt River Valley Water Users Association and the Salt River Project Agricultural
Improvement and Power District
John B. Weldon, Jr. and Mark A. McGinnis
Salmon, Lewis & Weldon PLC
2850 E Camelback Rd, Ste. 200
Phoenix, AZ 85016

Special Master Susan Ward Harris
Superior Court of Arizona
201 W. Jefferson Street
Courtroom 301
Phoenix, AZ 85003

The Nature Conservancy
Carla Consoli and Stanley Lutz
Lewis Roca Rothgerber Christie, LLP
201 East Washington Street
Suite 201
Phoenix, AZ 85004

U. S. Department of Justice
Patrick Barry and Yosef Negose
Environment and Natural Resources
P. O. Box 7611
Washington, D.C. 20044-7611