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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. W1-11-3407

ORDER TO MAP STOCK WATERING USES

CONTESTED CASE NAME: *In re SLD – Magoffin III.*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: ADWR shall file maps of stock watering uses by **August 28, 2020.**
NUMBER OF PAGES: 5
DATE OF FILING: July 24, 2020

On June 5, 2020, the Arizona Department of Water Resources filed a Report with its comments on drafts of abstracts of water rights for uses that were the subject of investigation in Watershed File Report 115-06-005 (“WFR”). The Report posed two issues about potential rights for stock watering uses and one issue regarding the priority dates for which it seeks additional guidance.

1 Claims for water rights for stock watering were the subject of years of litigation that
2 culminated in a determination that these uses are *de minimis*. Specifically, the Special Master
3 found that “[t]he consumption of water by livestock at instream locations with no physical
4 improvements or at unimproved springs has minimal impact on the water outflow from the San
5 Pedro River watershed.” Memorandum Decision, Findings of Fact, and Conclusions of Law
6 for Group 1 Cases involving Stockwatering, Stockponds, and Domestic Uses, dated November
7 14, 1994, amended February 23, 1995, approved and modified September 27, 2002
8 (“Decision”) at 23. A *de minimis* characterization “is fundamentally a case management
9 determination by a court that the benefit of resolving certain types of dispute are substantially
10 outweighed by the cost of doing so.” *Id.* at 8. Thus, to avoid litigation that exhausts the
11 resources of the parties, the court, and ADWR with no appreciable resulting benefit, stock
12 watering uses in the San Pedro River watershed are summarily adjudicated in accordance with
13 the rules in the Decision.

14 The Decision directs that abstracts will be prepared for “[a]ll stockwatering uses,
15 meaning the instream watering of stock at unimproved or improved locations on a stream, creek,
16 spring, or similar surface area.” *See* Decision at 38. Where ADWR has identified a potential
17 water right in a WFR for stock watering, the determination whether to prepare an abstract will
18 not depend on whether the use is associated with a stockpond. There may be reasons that an
19 abstract is not prepared for a potential stock watering right, such as the failure to file a statement
20 of claimant, but the association of the potential right with a stockpond is not a reason to not
21 prepare an abstract.

22 The rules established in the Decision heavily rely on the WFRs to define certain
23 characteristics of a water right for a *de minimis* use. The Arizona Department of Water
24 Resources prepared the WFRs as part of its statutory duty under A.R.S. §45-256 to investigate
25 water claims and uses. In its Report, ADWR explained that potential stock watering uses
26 included in the WFR as potential water rights were confirmed by aerial imagery of a water
27

1 course. Report at 2. Focusing on the information provided in the WFR, the Decision directs
2 that an abstract shall identify the location of a stock watering use as follows:

3 For stockwatering uses, the information set forth in the watershed file
4 report under the "uses" section will be utilized for determining this
5 characteristic. The place of use will be described to the quarter-quarter (1/4-
6 1/4) section in which the use occurs. In cases of two or more stockwatering
7 uses within the same quarter-quarter section, the rights will be described to
8 the nearest quarter-quarter-quarter section (1/4-1/4-1/4).

9 Decision at 43.

10 The purpose of the requested review by ADWR of the abstracts, which incorporate the
11 information from the relevant WFR, is to allow ADWR to use its advanced mapping capabilities
12 to verify or correct, if necessary, the descriptions of the places of use previously found and
13 reported in the WFR. According to ADWR, the methodology employed to record the place of
14 use in the WFR was to locate the land where the relevant water course entered the boundary of
15 the property that was the subject of the WFR. It explained that this approach was taken due to
16 the limited electronic mapping capacity available in the late 1980s. In its Report, ADWR
17 identified several instances where this methodology has created issues and it offered several
18 possible methods to identify and map the places of use for stock watering. In keeping with the
19 reasoning underlying the use of a summary adjudication, additional investigation should not be
20 required to describe the place of use unless the description in the WFR is clearly erroneous.
21 Accordingly, ADWR shall map the stock watering use based on the description in the WFR.
22 The map shall identify the watercourse with line segments from the boundary location identified
23 in the WFR, along the length of the downstream watercourse to the closer of the place of use
24 identified in the Statement of Claimant or the location of a stockpond described in the WFR
25 that is associated with the stock watering use.

26 The final issue raised in the Report concerned Priority Dates. The issue is whether the date
27 December 31, 1883 should be used when the WFR identified 1884 as the date of apparent first use
28 and the underlying documents state the date of prior first use as "prior to 1884". The Decision
states:

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The priority date for these uses will be determined by use of the apparent dates of first use as listed in the potential water right section of the watershed file report. If the watershed file report is incomplete or ambiguous, then the priority date will be determined in the following sequence: (1) the earliest date set forth in a judicial decree of Water Rights Registration Act filing; or (2) the earliest date set forth in any other preadjudication filing, adjudication filing, or other admissible credible evidence.

If the information if available, the priority date will be assigned as the day, month, and year. If the day is not available, the priority date will be the last day of the month and the year. If neither a day nor month is provided, the priority date will be the last day of the year.

Decision at 42.

In this particular case, the Watershed File Report is neither incomplete nor ambiguous. It states a year, which is consistent with the format used throughout the HSR to identify the date of apparent first use. Pursuant to the Decision, the appropriate priority date to be entered in the abstract is December 31, 1884. The Arizona Department of Water Resources suggests that the priority date should be December 31, 1883. While that proposal is reasonable, the Decision requires deference to the date in the WFR and the underlying documents in this case do not warrant finding an earlier priority date than would be accorded by the rules set forth in the Decision.

IT IS ORDERED that by **August 28, 2020** ADWR shall file maps consistent with this Order for the potential water rights for stock watering uses found in WFR 115-06-005.



SUSAN WARD HARRIS
Special Master

1 On July 24, 2020, the original of the foregoing was delivered
2 to the Clerk of the Maricopa County Superior Court for filing
3 and distributing a copy to all persons listed on the Court-
4 approved mailing list for this contested case.

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6 Barbara Brown
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