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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS
TO USE WATER IN THE LITTLE
COLORADO RIVER SYSTEM AND
SOURCE

CV6417

Case: **CV6417-33-6436**

**ORDER INITIATING CONTESTED
CASE AND SETTING INITIAL
CONFERENCE**

CONTESTED CASE NAMES: *In re W & J Hamilton et al.*
HSR INVOLVED: Silver Creek Hydrographic Survey.
DESCRIPTIVE SUMMARY: The Clerk of Apache County is directed to initiate CV6417-33-6436. Initial conference set for **Wednesday, September 18, 2024 at 10:00 a.m.**
NUMBER OF PAGES: 13

General Explanation

This order opens a case to determine rights to use water on land that the Apache County Assessor has identified as owned by Earnhardt Ranches. The first step in this case is an initial conference with the Court, scheduled for **Wednesday, September 18, 2024 at 10:00 a.m.** to determine if the landowner is interested in pursuing water rights

1 claims. The current landowner **MUST** attend the scheduled initial conference if they
2 plan to pursue water rights claims. Failure to appear at the initial conference could result
3 in the dismissal of the case and the loss of potential surface water rights.

4 In this case, Walter, June, and Gary Hamilton, Michael and Marcia Peddie, and
5 Arnold and Mildred Dysterheft (“Claimants”) filed Statement of Claimant (“SOC”) 39-
6 83099 on June 28, 1984, to assert claims to use water on land that appears to comprise
7 Apache County tax parcel 106-22-013, which is currently owned by Earnhardt Ranches
8 LLC.

9 During the initial conference, landowner Earnhardt Ranches LLC must state
10 whether it intends to pursue water rights claims.

11
12 **Additional background information on the process for determining water rights**
13 **in Arizona can be found on Attachment A.**

14
15 **Details of the Case**

16 Statement of Claimant (“SOC”) 39-83099 includes a claim for a stockpond with
17 a maximum storage volume of 0.5 acre-feet and that supplies 30 cows for 5 months per
18 year.

19 The Arizona Department of Water Resources (“ADWR”) investigated the claims
20 made by the Claimants and prepared Watershed File Report (“WFR”) 33-52-035,
21 published in the Final Silver Creek Watershed Hydrographic Survey Report (1991)
22 (“Silver Creek HSR”). The WFR recorded that water was being used in stockponds
23 within northwest-southwest-southeast section 20, Township 10 North and Range 24
24 East. A copy of the WFR is attached as Attachment B. A copy of the map, prepared by
25 ADWR, depicting the investigation area is attached as Attachment C.
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1 After ADWR issued the WFR, objections were filed to the findings made in the
2 WFR by the Salt River Project and the United States joined by the Navajo Nation, the
3 Hopi Tribe, and the San Juan Southern Paiute Tribe. The purpose of this case is to
4 consider stockpond claims in SOC 39-83099 and to resolve the objections to WFR No.
5 33-52-035.

6 7 **Claimant and Landowners**

8 WFR 33-52-035 lists the Claimants as the owners of the property investigated in
9 1991. According to maps obtained from the Navajo County Assessor's ("Assessor")
10 website, the land investigated appears to comprise Apache County tax parcel 106-22-
11 013, which is currently owned by Earnhardt Ranches LLC.

12 A copy of the map showing the relevant tax parcels and current ownership is
13 attached as Attachment D. The public records of ADWR do not contain any assignments
14 of the SOC listed in the WFRs, and landowners do not appear to have filed any additional
15 SOC's since the issuance of the 1991 HSR.

16 17 **Objections**

18 Objections to WFR 33-52-035 concern the absence of a basis of right for the
19 proposed water rights. In this case there was no appropriately registered stockpond at
20 the time of the WFR investigation. Additionally, the SOC in question is not assigned to
21 the current property owners.

22 In order to obtain a decreed water right, a property owner must present to the
23 Court both an appropriate SOC claiming a water right in the name of the property owner
24 **and** evidence of that right. This evidence may include the relevant WFRs. Alternatively,
25 the property owners may settle with objectors. If either the property owner proves to the
26 Court the existence of a water right on their property or enters into a valid settlement
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1 approved by the Court, the court will recognize enforceable water rights in a “Final
2 Decree.” Ariz. Rev. Stat. § 45-257(B).

3 This is an order from the Court, and all parties must comply with the following
4 instructions. The failure to obey this, or any, court order may result in the dismissal of
5 this case and the loss of any potential appropriative water rights associated with the
6 property mentioned in this order. If you have questions regarding this Order or any of
7 the attachments, please contact the General Stream Adjudication, Office of the Special
8 Water Master, at (602) 372-4115. Please note that staff can only answer administrative
9 questions and cannot provide legal advice.

10
11 **IT IS ORDERED:**

12 1. Case Initiation. This order initiates contested case CV6417-33-6436.

13 This case will resolve claims to use appropriable water asserted in Statement
14 of Claimant 39-83099 and objections that were filed to Watershed File
15 Report No. 33-52-035.

16
17 2. Initial Conference. An initial conference shall be held on **Wednesday,**
18 **September 18, 2024 at 10:00 a.m.** to determine whether each current
19 landowner intends to pursue a water right claim. The conference will be held
20 using the Court Connect program. Instructions for Court Connect are attached
21 as Attachment E. If you receive this Order by email, click on the red box “Join
22 Court Connect Hearing” on the attached instructions to make an appearance.
23 If you do not receive this Order by email, log into the Court Connect program
24 on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not
25 have access to the internet, you may attend telephonically using the telephone
26 number and access code included in the instructions for Court Connect.

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3. Parties. The litigants in this contested case are the claimants, the current landowner, and all parties who filed objections to the Watershed File Report. The objectors are the United States, the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe.

4. Objections. Copies of objections filed to this case can be found under the respective case names and numbers on the following website: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp>.

5. Court-Approved Mailing List.

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

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

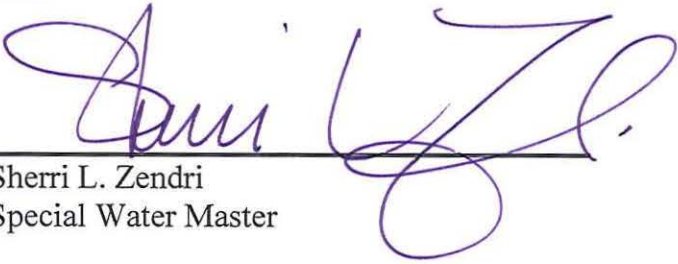
C. Claimants wishing to be added or removed from the mailing list shall file a motion with the Special Master. Parties allowed to intervene will be automatically added to the Court-approved mailing list.

D. The Clerk of the Court will send copies of all minute entries and orders issued in this case to the parties listed on the Court-approved mailing list.

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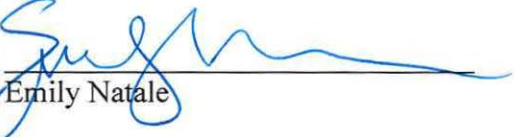
E. Claimants who would like to receive courtesy copies of minute entries and orders may request inclusion on an email list by sending a request to emily.natale@jbazmc.maricopa.gov.

Signed this 18th day of July 2024



Sherri L. Zendri
Special Water Master

On July 18, 2024, the original of the foregoing was delivered to the Clerk of the Apache County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case, a copy of which is attached hereto as Attachment F, and to all persons listed on the Court-approved mailing list for CV6417.



Emily Natale

ATTACHMENT A

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General Background on the Water Rights Determination Process in Arizona

A general stream adjudication is a judicial proceeding to determine the quantity and priority of all water rights in a river system. Arizona is undertaking general stream adjudications of both the Gila River and the Little Colorado River systems. A river system includes surface water flowing “in streams or other natural channels”, groundwater sufficiently connected to that surface water, and water subject to claims by the federal government. Ariz. Rev. Stat. § 45-251(7). Recognizing and respecting water rights and the priority of such rights is important in Arizona where times of drought or water scarcity can occur.

All cases begin with the filing of a “Statement of Claimant,” (“SOC”) in which a property owner makes a claim for a right to use surface water on their property. Ariz. Rev. Stat. § 45-254(A). This person is the “claimant.” The SOCs contain, among other characteristics, a description of the source and quantity of the water used, the location of use, the location from which the water was diverted, and the date when the water was first put to use. *Id.* § 45-254(C).

After the property owner files the SOCs, the Arizona Department of Water Resources (“ADWR”) prepares a “Watershed File Report,” (“WFR”) in which ADWR investigates the claims in the SOCs and recommends water rights associated with the property. *Id.* § 45-256(B). ADWR compiles all WFRs for a watershed into a comprehensive Hydrographic Survey Report (“HSR”) and publishes the report for public review and comment. In response, other claimants in the Adjudication may file “objections” disputing the information or recommendations in the WFR. The individuals who file objections are called “objectors.”

This “contested case”, one of thousands in the Little Colorado River System, will evaluate claims asserted in specific Statements of Claimant while considering objections to the WFR that reported ADWR’s initial inspection of those claims.

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ATTACHMENT B
Watershed File Report

LAND OWNER

 WATERSHED FILE NO.

 HAMILTON, W. & J. & G. 033-52-035
 PEDDIE, M.B. & M.B.
 DYSTERHEFT, A.H. & M.
 HANNA, L. & P.L.

PHOTO ID - 19-7,19-9 QUAD 1 - SPONSELLER MTN QUAD 2 - ORTEGA MTN

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION	TWNP	RNGE	CLAIM DATE	DIVERSION LOCATION SECTION	TWNP	RNGE
39-0083099		STOCKPOND	.50	NENENW29	100N	240E	1980	NENENW29	100N	240E

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
39-0083099	STOCKPOND	STOCKPOND		SP001, SP002

RESERVOIRS

PWR #	LOCATION SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
SP001	NWSWSE20	100N	240E		SURFACE	1977	UNNAMED	STOCKWATERING
SP002	NWSWSE20	100N	240E		SURFACE	1977	UNNAMED	STOCKWATERING

PWR SUMMARY

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	** APPARENT FIRST USE DATE	** DATA SOURCE	DRAINAGE AREA/ WATER SOURCE NAME
SP001	39-0083099	NONE	1977	1977 AERIAL PHOTO	SILVER CREEK
SP002	39-0083099	NONE	1977	1977 AERIAL PHOTO	SILVER CREEK

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE	APPLICABLE ACREAGE/SURFACE AREA (ACRES)	WATER DUTY	ESTIMATED VOLUME	REMARKS
SP001	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	
SP002	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	

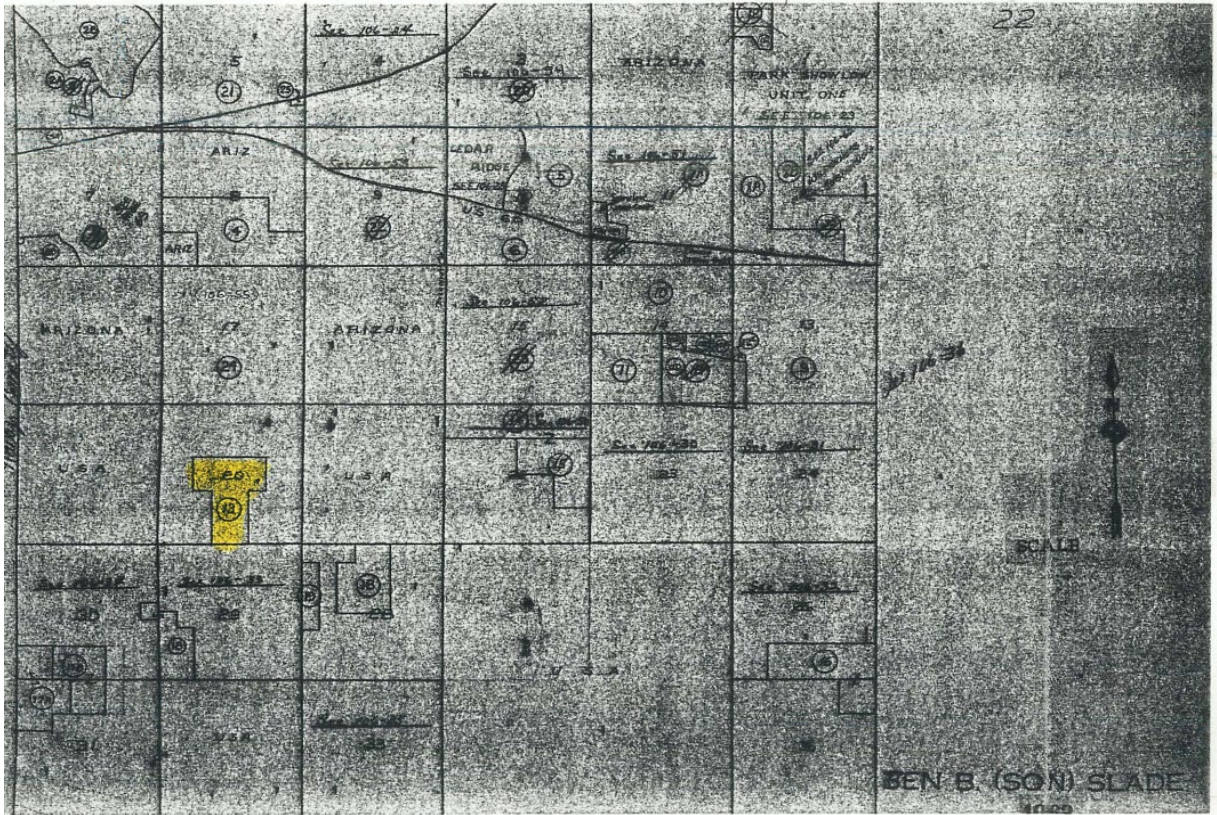
EXPLANATION

USES AND RESERVOIRS
 SP1 & SP2 - STOCKPONDS LOCATED ON UNNAMED TRIBUTARIES TO BROWN CREEK, WITHIN THE SILVER CREEK DRAINAGE AREA.

ATTACHMENT C

ADWR Map

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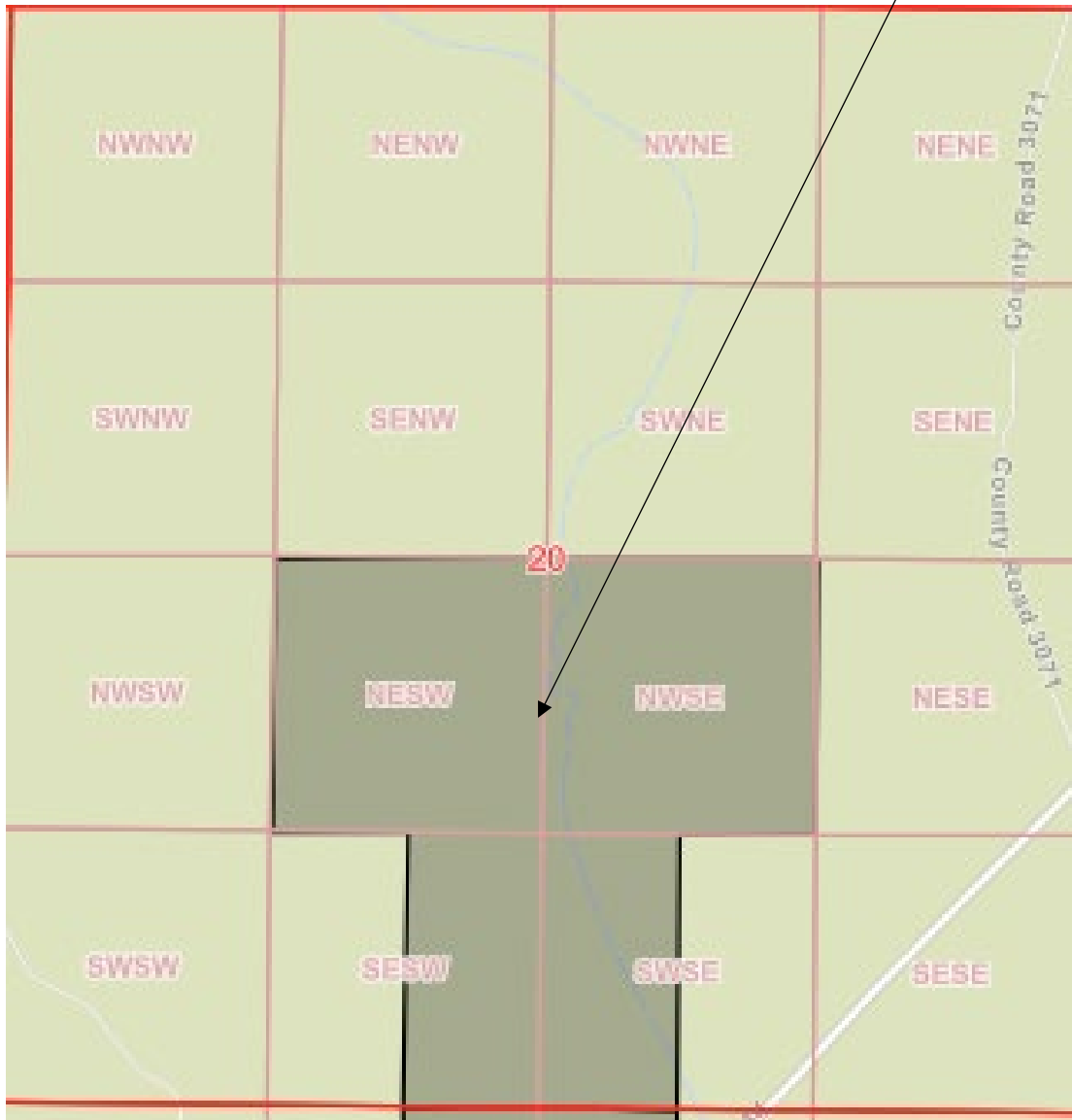


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ATTACHMENT D

Assessor Map

APN: 106-22-013
Earnhardt Ranches LLC



ATTACHMENT E



Court Connect Hearing Notice for In re W & J Hamilton et al.

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re W & J Hamilton et al.

Contested Case No. CV6417-33-6436

Start Date/Time: Wednesday, September 18, 2024 at 10:00 a.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)

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ATTACHMENT F

Initial Court-Approved Mailing List

Arizona Department of Water Resources
Kimberly R. Parks and Karen J. Nielsen
1110 West Washington, Suite 310
Phoenix, AZ 85007

C. Campbell, P. Londen, P. Bowden
OSBORN MALEDON, P.S.
2929 North Central Avenue, Ste 2100
Phoenix, AZ 85012

Clerk of the Superior Court
Apache County
P.O. Box 365
St Johns, AZ 85936

San Juan Southern Paiute Tribe
J. Kolsrud, I. Fimbres-Ruiz, K. Shaffer
May, Potenza, Baran & Gillespie, PC
1850 N. Central Avenue, Ste 1600
Phoenix, AZ 85004-4633

Mark J. Widerschein
Maggie Woodward
Alexa Penalosa
US Dept of Justice – ENRD
Natural Resources Section
PO Box 7611
Washington, DC 20044

Navajo Nation
Evan Hiller, Candace French, Jeffrey
Leonard, Judith Dworkin and Kathryn
Hoover
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251

Special Master Sherri Zendri
Superior Court of Arizona
201 W. Jefferson Street
Courtroom 301
Phoenix, AZ 85003

Navajo Nation Department of Justice
Ethel Branch & G. Michelle Brown-Yazzie
PO Drawer 2010
Window Rock, AZ 86515

Vanessa Boyd Willard
U. S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202

Earnhardt Ranches LLC
c/o Joshua J McClatchey
7300 West Orchid Lane
Chandler, AZ 85226

Hopi Tribe
General Counsel of the Hopi Tribe
P. O. Box 123
Kykotsmovi, AZ 86039

W & J Hamilton et al.
PO Box 1002
Pinetop, AZ 85935