

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/21/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN HARRIS

L. Brown

Deputy

In re David W. Stickland
Contested Case No. W1-11-1365

FILED: 11/01/2021

In Re: The General Adjudication
of All Rights to Use Water in the
Gila River System and Source
W-1, W-2, W-3 and W-4 (Consolidated)

MINUTE ENTRY

Courtroom CCB 301

1:42 p.m. This is the time set for a Status Conference before Special Master Susan Ward Harris.

W-1, W-2, W-3 and W-4 (Consolidated)

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

- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Rhett Billingsley on behalf of ASARCO LLC
- Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Richard Palmer on behalf of the Tonto Apache Tribe
- Sue Montgomery on behalf of the Yavapai Apache Nation (and observing on behalf of the Pasqua Yaqui Tribe)
- Richard and Kerry Hopper on behalf of the Hopper Living Trust
- Thomas Murphy on behalf of Gila River Indian Community
- Vicky Nelson and Janice Eberhardt
- Mark McGinnis observing on behalf of Salt River Project
- Richard and Nancy Krug

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

The purpose of today's hearing is to discuss claims made for rights to appropriable water for use on land that the Cochise County Assessor has identified as owned by Sandra Jean, the trustees of the Hopper Living Trust, and Janice Eberhardt and Vicki Nelson.

The Court addresses the landowners Mr. and Mrs. Hopper and tells them that ADWR did an investigation of water use on the property in connection with the statement of claimant filed some time ago. ADWR found that there was no irrigation use on the property so it issued the report with no potential water rights.

Mr. Hopper states they do not have a well on the property as of now, but intend to drill a well in the future.

The Courts asks Mr. Hopper what is the source of water now.

Mr. Hopper states there is no source of water on that land.

Mrs. Hopper states they do not live on the land and the property is vacant.

The Court addresses landowners Richard and Nancy Krug and asks about their claims to water rights?

Mr. Krug feels that the water rights to the well in question belong to them because it is on their property and they maintain a residence there. They are currently irrigating a small grove of pine trees that have been on the property for over twenty or thirty years and the trees are approximately twenty-five feet in height.

The Court asks Mr. Krug if they have filed a statement of claimant.

Mr. Krug states they have not filed a statement of clamant as of yet as they were just recently presented with a copy of today's hearing and prior to that he knew nothing about it. They were issued a license to the well.

The Court addresses landowners Ms. Nelson and Ms. Eberhardt about their position regarding water rights to the property.

Ms. Nelson states they have a well that has been there for about ten years and when they bought the land in January, they had the well in their name and they understood that they had water rights and could use the water for growing vegetables in their own garden and for fruit trees. They were assured that that was fine.

The Court asks Ms. Nelson if they have filed a statement of claimant.

Mrs. Nelson stated she is not sure what that is, or why they would have filed it, because they were assured that everything was perfect with the water rights and they do not know what this is about.

The Court addresses Mr. and Mrs. Hopper. Under Arizona law, the court in the general adjudication cannot decree a current right to water that is not being beneficially used but may be used in the future. When a landowner desires to begin using water, then the landowner must comply with the rules applicable to the type and source of water that will be used. The Court further stated that there is no reason for Mr. and Mrs. Hopper to continue to participate in this case because they are not currently using water on the land and only anticipate a use in the future.

The Court addresses Mr. and Mrs. Krug and Ms. Nelson and Ms. Eberhardt. Arizona has laws that govern the use of water. If a well is the source of the water, then the appropriate process depends upon whether your well's pumping affects the subflow of the river or is pumping groundwater. The subflow zone has been defined for the San Pedro watershed. The Court is not sure if the wells used by the landowners are in the subflow zone. Wells that are not located in the subflow zone are presumed to be pumping groundwater and not subflow. A well may pump appropriable water if the cone of depression formed by the well extends into the subflow zone. If the wells are in the subflow zone, then the wells are presumed to be pumping appropriable water. The test to determine whether or not a well's cone of depression extends into the subflow zone and its pumping is depleting the subflow zone has not been completed.

The Court will determine if the parties are in the subflow zone. The Court ask Ms. Eberhardt and Ms. Nelson if their well is not in the subflow zone and have not filed a statement of claimant, do they wish to assert a claim for appropriable water.

Ms. Nelson states yes they would.

To proceed with the claim the parties need to file a statement of claimant with ADWR. Their claim will be considered at such point there is an approved test.

The Court addresses Mr. and Mrs. Krug and asks if they are outside the subflow zone do they wish to proceed with a claim for subflow water?

Mr. Krug states yes they do.

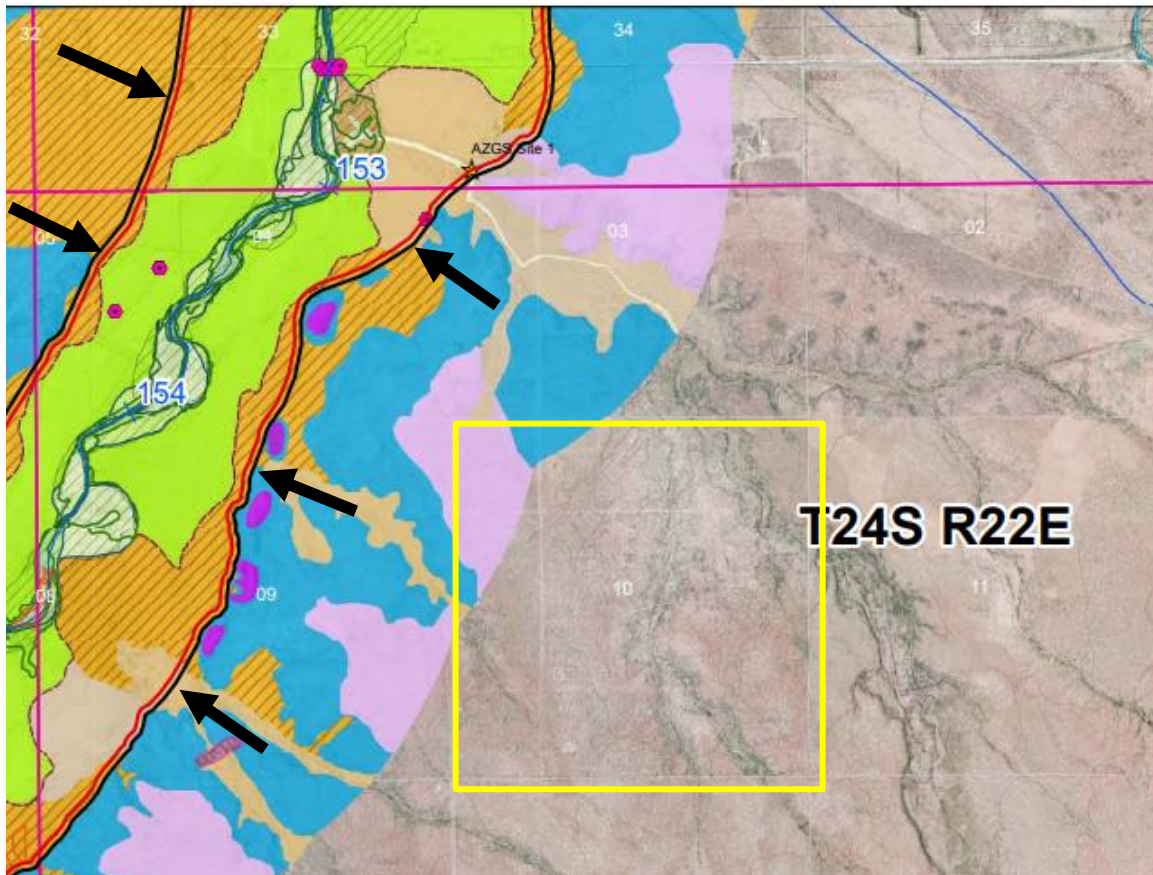
No objections to the proposal laid out by the Court.

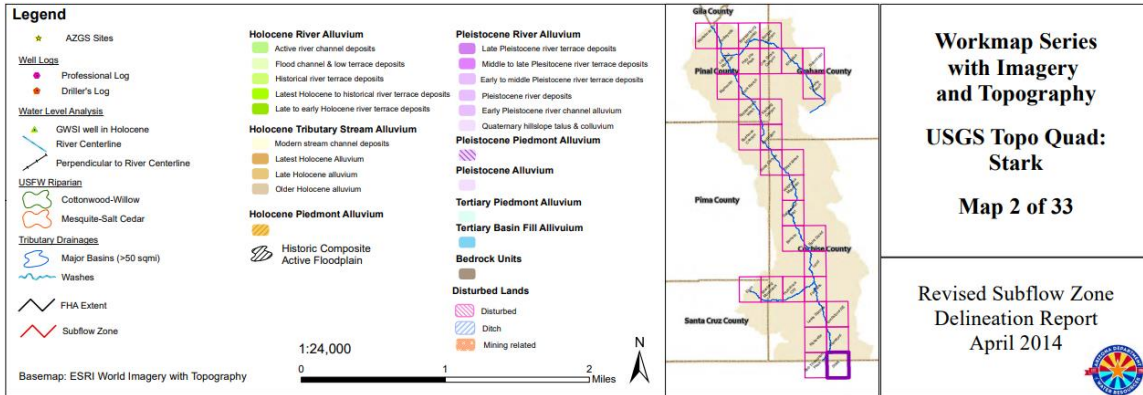
The Court will include in the minute entry whether the wells are inside or outside of the subflow zone. If the parties wish to proceed with this contested case they must either obtain an assignment of the statement of claimant listed in the watershed file report or file a statement of claimant with ADWR.

1:42 p.m. Matter concludes.

LATER: The entirety of the land described in Watershed File Report 111-24-CC-002 and this contested case, *In re David W. Stickland*, W1-11-1365, is contained in Section 10 Township 24S Range 22E. According to the Arizona Department of Water Resources' April 2014 Revised Subflow Delineation Report ("2014 Report"), all of Section 10 Township 24S Range 22E is located outside the boundaries of the Subflow Zone of the San Pedro River.

A copy of the map included in the 2014 Report is reproduced below with annotations relevant to this case. Section 10 is outlined by the yellow box shown on the map below. The black arrows point to the line that represents the lateral boundary of the Subflow Zone.





IT IS ORDERED that this case is stayed and no further action will be taken in this case until the test to be developed by ADWR is completed and approved. Once the subflow depletion test is approved, the stay in this case will be lifted and further proceedings will commence to adjudicate the objections to Watershed File Report 111-24-CC-002 and claims to water rights if the landowners have filed Statements of Claimant or obtained an assignment of the existing Statement of Claimant.

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 persons listed on the Court-approved mailing list.