#### SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

11/04/2021

#### SPECIAL WATER MASTER SUSAN WARD HARRIS

In re: The General Adjudication of All Rights To Use Water in the Gila River System and Source Contested Case No. W1-11-3395 Contested Case Name In Re Karen C. LeCount

In Re: Status Conference

#### CLERK OF THE COURT

L. Brown

Deputy

FILED: 11/22/2021

#### MINUTE ENTRY

Central Court Building- Courtroom 301

3:58 p.m. This is the time set for a Status Conference In Re Karen C. LeCount before Special Master Susan Ward Harris.

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

- Mark McGinnis on behalf of Salt River Project ("SRP")
- Carla Consoli on behalf of Arizona Chapter The Nature Conservancy
- Kimberly Parks, on behalf of Arizona Department of Water Resources ("ADWR")
- Lauren Mulhearn observing on behalf of the Tonto Apache Tribe
- Joseph Sparks on behalf of San Carlos Apache Tribe
- Kevin Crestin on behalf of the Arizona State Land Department
- Anna Magoffin as trustee of the Magoffin Family Trust

- Leroy Zatcheck on behalf of the Hughes Zatchek Trust
- David Brown and Garrett Perkins observing on behalf of Michael and Susan Cavender
- Brad Pew on behalf of ASARCO, LLC
- Robin Interpreter on behalf of the Yavapai Apache Nation
- Thomas Murphy on behalf of Gila River Indian Community
- John Burnside on behalf of BHP Copper

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

Mrs. Magoffin states that she has claims for two wells: Long Hollow and PM Bar. She states that the Long Hollow Well is in SW Sec. 21 T7S R20E and the PM Bar Well is in SE Sec. 21 T7S R20E. The Court states that there does not appear to be a watershed file report prepared for the SE Sec. 21 T7S R20E.

The Court asks Mrs. Magoffin do you know if there were any statements of claimant filed for the wells?

Mrs. Magoffin states that she could not find statements of claimant for the two wells.

Mrs. Magoffin states there were several wells on the property in W1-11-3395. There would have been an irrigation well, a house well. The original Statement of Claimant 39-12022, which would be in W1-11-3395, should have had those wells but they did not show up on the 1983 report.

Mrs. Magoffin states there are three wells that show on the ADWR prepared map for In re Karen C. LaCount, W1-11-3395; there are four wells showing. The Long Hollow and the PM Barr wells are not shown.

Mrs. Magoffin states that what I call the Long Hollow well is well registration no. 55-604314. The PM Barr is well registration no. 55-645603. They are both in Section 21.

The Court asks Mrs. Magoffin whether she know when the wells were put in?

Mrs. Magoffin states PM Barr in 1904 and Long Hollow in 1925.

The Court asks what statement of claimant were the wells included in?

Mrs. Magoffin states because I could never find them, I have just put in a statement of claim, and had to start from the beginning since they were not in the watershed map from 1983. They should have been under Statement of Claimant 39-12022, if you look at the original map of that, they were just not on that map. They were all the way over to the west well and they were not listed on that map.

The Court asks if the wells are in the subflow zone?

Mrs. Magoffin states the PM Barr is not, the Long Hollow is right on the red line.

The Court asks Mrs. Magoffin what water rights are you claiming with regard to these wells?

Mrs. Magoffin states stock watering.

The Court asks if you have a well outside the subflow zone that is not included in a watershed file report, why are we dealing with it in this case?

Mrs. Magoffin states we were trying to identify all the waters on the ranch and a lot of those were not in the subflow zone. I thought that was what needed to be done was identify all the waters on the ranch.

The Court asks Mr. McGinnis if information maintained by ADWR about these two wells shows that they were drilled before the watershed file report was issued, how do you propose we handle it?

Mr. McGinnis states ADWR could prepare an amended watershed file report to include these two wells and that would allow the Court to adjudicate the right through the *de minimis* process. So there would have to be an amended watershed file report, allow for objections, and then people could do corrections and then you are done. Are both the wells in the same WFR?

The Court states that the southwest quarter has been mapped in the WFR, and doesn't believe the southeast quarter has been mapped in the WFR.

Mr. McGinnis states that for the one that did not have a WFR, I am not sure how to do an amended WFR if there was never one. It seems that it may have go to San Pedro II. It is only going to San Pedro II because there was no WFR done 30 years ago.

The Court states that no watershed file report may have been done because no 39 was filed.

Mr. Sparks states he agrees with Mr. McGinnis. Mrs. Magoffin may have filed claims and they did not have legal descriptions so they may be floating in space somewhere. It will still require a claim from the appropriate Magoffin entity for that particular well so it will be a complete application and the WFR to go with it. The other well will have to start all over with a claim to initiate the WFR process. She is at the point under the amended statute in 1994 or 1995, but it seems like it is possible to make such a claim. I am not saying that is the correct interpretation, but that is one interpretation.

The Court asks Mr. Sparks whether he agrees with Mr. McGinnis if this well in the

southwest quarter was drilled prior to 1990, that we ask ADWR to do an amended WFR.

Mr. Sparks states he also thinks there needs to be a claim made by the appropriate Magoffin entity and with all the 39 requirements in the claim so that there is a claim and an amended WFR.

The Court asks Mr. Sparks if the Court needs to look at the 7<sup>th</sup> amended claimant to see if it lists the well in the southwest quarter?

Mr. Sparks states then he agrees with a process for the well in the southwest quarter.

The Court asks Mr. Sparks do I ask ADWR now to do a WFR for the southeast quarter or hold it for San Pedro II?

Mr. Sparks states I think we hold it for San Pedro II but do not do anything until there is a claim filed by the owner or the purported for that well with a legal description attached to it and an appropriate 39 claim form. Because we have a conversation and sort of agree because of what Mrs. Magoffin has said there is something out there, it doesn't mean that there is something the Court has to deal with unless there is a claim filed for it. We are at the point that we don't have to do a new WFR unless there is a claim filed for it.

The Court asks Mr. Sparks if Mrs. Magoffin has now filed a 39 for the PM Barr well in the southeast quarter but there was never one filed before, should I ask ADWR to file a WFR now or wait for San Pedro II?

Mr. Sparks states it should wait for San Pedro II so everyone has notice and an opportunity to weigh in on it.

Mr. Crestin states I agree with Mr. McGinnis. She has filed new surface claims for these two wells so they have new 36 numbers and have been incorporated in the same Statement of Claimant 39-12022 which was part of the WFR. If we can confirm from the new 36 filings the locations of the wells and if it is in the existing WFR, it can be amended easily. If there was not a WFR, then it will have to wait for San Pedro II just from a notice perspective.

Mrs. Mulhearn states we agree with what Mr. Crestin.

Mrs. Interpreter states we too agree with what Mr. Crestin.

Mr. Murphy states he agrees with the comments made by Mr. McGinnis and Mr. Sparks. The statement of claimant 39-12022 looks like there were portions added within the last two days.

The Court states I am going to go back and look at the amended 39-12022 and the well registrations for each of these wells and if they are within an area that was already

mapped in the original San Pedro II, then I will ask ADWR to file an amendment. If the wells are located in an area for which there no WFR done, then that claim will be included in the San Pedro II, but will not be adjudicated now.

Mrs. Magoffin states there are new statement of claim (36) numbers for the wells. The new Statement of Claim for Long Hollow well is 36-106061 and the Statement of Claim for PM Barr well is 36-106063.

The Court asks Mrs. Magoffin, once we deal with these two claims do you think all your claims have now been adjudicated?

Mrs. Magoffin states we have a claim in West well and it is tied to the Cavenders 00245. Those would still be pending.

4:26 p.m. Matter concludes.

#### LATER:

On September 27, 2021, Anna Magoffin filed a request for a status conference in 15 cases. In that request for a status conference, Mrs. Magoffin referenced the PM Bar Well and the Long Hollow Well by name but not by well registration number or location. This case, contested case W1-11-3395, was not included on the list of cases in the request for a status conference.

#### Background

In 1991, Arizona Department of Water Resources completed its investigation of claims filed for rights to appropriable water and prepared Watershed File Reports and Zone 2 Well Reports. At that time, the land now controlled by the Magoffin Family Trust was owned and leased by a number of separate landowners. Since the time that Arizona Department of Water Resources completed its hydrographic survey report of the San Pedro watershed in 1991 (the 1991 San Pedro HSR), the trustees of the Magoffin Family Trust have assembled a number of parcels of land into a ranch. In order to adjudicate the claims for water rights for the land owned and leased by the Magoffin Family Trust, ten cases have been initiated to encompass all of the land for which the trustees of the Magoffin Family Trust claim rights to water. *Figure 1* is a map filed by the trustees of the Magoffin Family Trust that outline the boundaries of the Magoffin Family Trust land. The map has been annotated with the outlines of the boundaries of the Watershed File Reports and Zone 2 Reports prepared by ADWR and included in the 1991 San Pedro HSR.

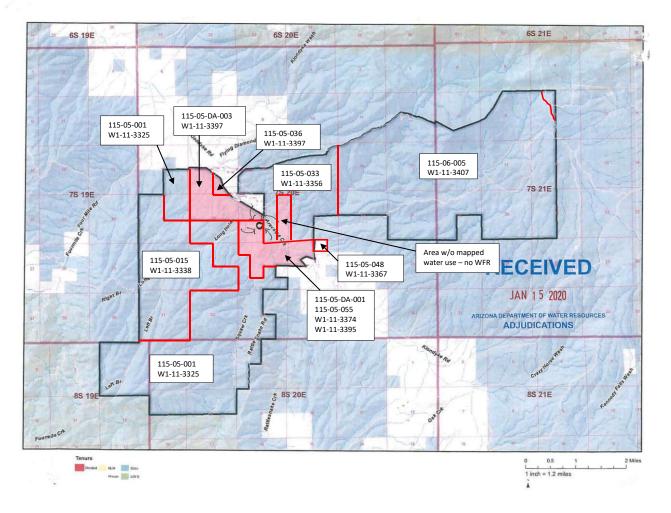
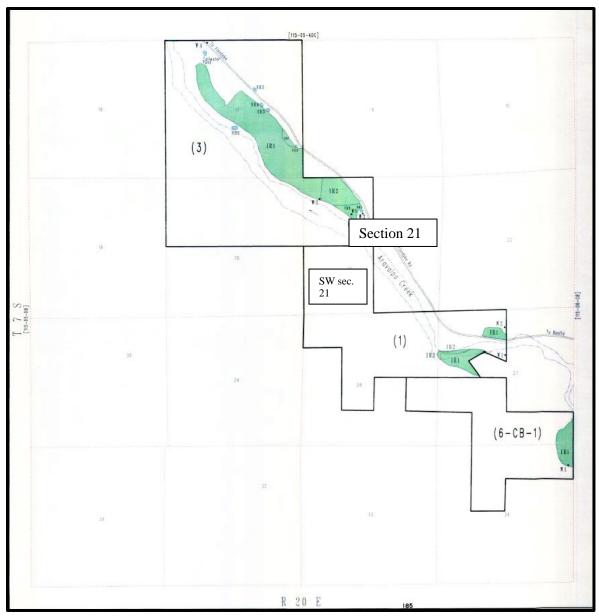


Figure 1

On July 30, 2019, this case was initiated to adjudicate the claims for rights to appropriable water and resolve objections to Zone 2 Well Report 115-05-DA-001 ("Report"). The Report includes the southwest quarter of Section 21 T7T R20E, portions of the north half of Section 28 T7S R20E, and the northwest quarter of section 27 T7T R20E. The Report identified the use of water for irrigation on land in Sections 27 and 28 T7S R20E. The map prepared in connection with the Report located two wells in the northwest quarter of Section 21. *See figure 2*. The Report identified two statements of claimant: 39-6486 and 39-12022. Since this case was initiated, Anna Magoffin has filed eight amendments to Statement of Claimant 39-12022.



*Figure 2.* Map for Zone 2 Report 115-05-DA-001. The land involved in this case is labelled as "(1)". The map has been annotated with labels to clearly show the location of Section 21 and the southwest quarter of section 21 Township 7S R 20E.

On May 27, 2020, Arizona Department of Water Resources prepared an aerial map that shows irrigated fields and the location of two wells, registration no. 55-203485 and registration no. 55-604311, in the northwest quarter of section 27. A copy of the map prepared by ADWR is attached as Attachment A.

On June 2, 2021, an order was issued approving the parties' stipulation to a proposed abstract for a right to water for irrigation use. Well, registration no. 55-604311, provided the source of water.

On June 3, 2021, an order was issued which approved proposed abstracts for a domestic use, a stockpond and a stockwatering use that rely on the two wells, well registration nos. 55-203485 and 55-604311 included on the map prepared by Arizona Department of Water Resources in 2020:

Type of Use	Location	Source of Water
Domestic	NW Sec. 27, T7S R20E	Well 55-203485
		Southeast quarter of the northeast quarter of the northwest quarter of Section 27 T7S R20E
Stockpond	NW Sec. 27, T7S R20E	Well 55-604311
		Northeast quarter of the southeast quarter of the northwest quarter of Section 27 T7S R20E
Stock watering	NW Sec. 27, T7S R20E	Well 55-203485
		Southeast quarter of the northeast quarter of the northwest quarter of Section 27 T7S R20E

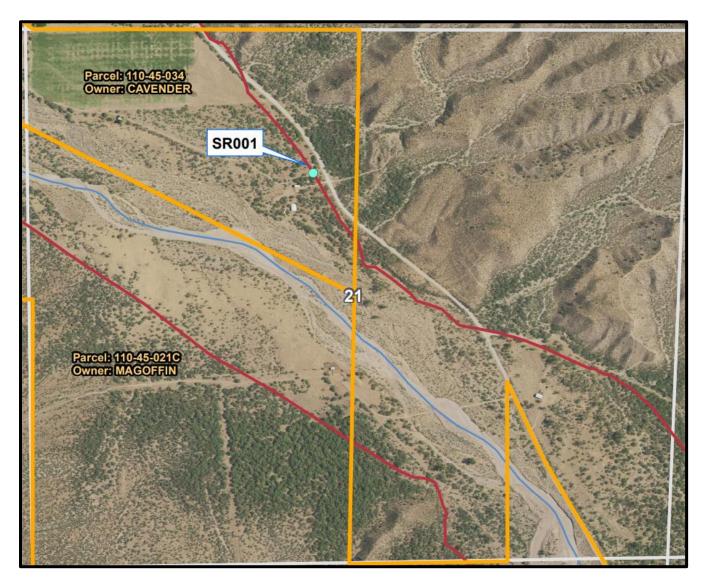
#### **New Claims**

In the September 27, 2021, request for a status conference, Mrs. Magoffin asserted claims for rights to water for stock watering from a well that the trustees call the Long Hollow well, well registration no. 55-604314 and the PM Barr well, well registration no. 55-64603. Those wells will be discussed separately below.

#### Long Hollow Well – Well Registration No. 55-604314

On January 15, 2020, Mrs. Magoffin amended Statement of Claimant 39-12022 to claim a right to water for stock watering. The place of use was identified by reference to Arizona State Land lease 005-104147-00. The claimed source of water was a well, registration no. 55-604314, that she reported as located in SWNESE Sec. 21 T7S R20E. Mrs. Magoffin identified well 55-604314 as the Long Hollow well. On August 17, 2021, Anna Magoffin as trustee of the Magoffin Family Trust filed Statement of Claim 36-106061 for Long Hollow Well, well registration no. 55-604314, with a claimed priority date of October 10, 1913.

According to the public records of the Arizona Department of Water Resources, the well registered under number 55-604314 was registered in 1982. The initial registration listed the well as located in SENESW Sec. 21, T7S R20E and the place of use is NWNENW Sec. 29 T7S R20E. A request to change well information was filed on June 24, 2014. The location of the well was SENESW Sec. 21 T7S R20E. Arizona Department of Water Resources lists the well as located in SENESW Sec. 21 T7S R 20E. The Long Hollow Well, well registration number 55-604314, is located in the southwestern quarter of Section 21. The southwestern quarter of Section 21 T7S R20E is included in this contested case.



*Figure 3.* Map of section 21 T7S R20E that shows the boundaries of the subflow zone. Well No. 55-604314 is located in the southwest quarter of section 21.

*Source*: Report filed by ADWR on August 30, 2019 in contested case no. W1-11- 3397. as Attachment A at 2.

The Zone 2 Report 115-05-DA-001 referenced a domestic use and a cataloged well. Arizona Department of Water Resources listed that well, well registration 55-604314, as a Catalogued Well in Vol. 8 1991 San Pedro HSR at 145. A copy of the reference in the Catalogued Well is attached as Attachment B. It identified the well as a stockwell located in SENESW Sec. 21 T7S R20E. The Catalog does not provide enough information to allow the *de minimis* procedures to be applied to Mrs. Magoffin's claim for a water right for stock watering.

The legal description for the location of the well is not sufficiently specific to determine if the well registration 55-604314 is located in the subflow zone. *See figure 3*. Accordingly, ADWR shall prepare a map that locates the well relative to the boundary of the subflow zone. This contested case is intended to adjudicate claims for rights to appropriable water. Not all water is appropriable water. Water pumped from the subflow zone is presumed to be appropriable water.

#### PM Barr Well Registration No. 55-645603

Mrs. Magoffin filed an amendment to Statement of Claimant 39-12022 on October 3, 2019 to claim a right to water for stock watering from a well located in SWNESE Section 21, T7S R20E with a 1910 priority date. The well in that Statement of Claimant is identified by registration number 55-604311. According to the public records of Arizona Department of Water Resources, well registration number 55-604311 is located in NESENW section 27 T7S R20E. Well Registration number 55-604311 is identified as the source of water for a proposed water abstract for a stockpond. *See* Table 1. At this point it does not appear that a Statement of Claimant has been filed for Well Registration No. 55-645603. On August 17, 2021, Anna Magoffin, as trustee, filed Statement of Claim 36-106063 for the PM Bar Well, well registration no. 55-645603 with a claimed priority date of September 19, 1913.

According to the public records of the Arizona Department of Water Resources, the well registered under number 55-645603 was registered in 1982. The initial registration listed the well as located in SWNESE Sec. 21, T7S R20E. Requests to change well information were filed on October 31, 1989, August 20, 1993, June 24, 2014, and October 22, 2014. The location of the well was SWNESE Sec. 21 T7S R20E. Arizona Department of Water Resources lists the well as located in SWNESE Sec. 21 T7S R 20E. The PM Bar Well, well registration number 55-645603, is located in the southeastern quarter of Section 21. The southeastern quarter of Section 21 T7S R20E is not included in this contested case.

Arizona Department of Water Resources listed the PM Bar well, well registration 55-645603 as a Catalogued Well in Vol. 8 1991 San Pedro HSR at 293. A copy of Vol. 8, page 293 is attached as Attachment C. Arizona Department of Water Resources identified the well as a stockwell located in SWNESE Sec. 21 T7S R20E with a claim date of 1947. Arizona Department of Water Resources did not prepare a Watershed File Report for any water uses on land in the southeast quarter of Sec. 21 T7S

R20E. Thus, no claim for water from Well Registration number 55-604311 can be adjudicated at this time because Arizona Department of Water Resources has not prepared the requisite report and no claimant has had the opportunity to object to a report on the claimed water right.

**IT IS ORDERED** that Arizona Department of Water Resources shall prepare a map that locates the Long Hollow well, well registration no. 55-604314, and its proximity to the subflow zone. The map shall be filed by **January 20, 2022.** 

**IT IS FURTHER ORDERED** that a Status Conference shall be held on **February 3, 2022 at 1:30 p.m**. The Status Conference shall be held using the Court Connect program. Instructions for Court Connect are attached as attachment D. If you receive this Order by email, click on the red box "Join Court Connect Hearing" on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <u>https://tinyurl.com/specialwatermaster</u>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect. You may also attend telephonically using the following numbers:

Instructions for telephonic participation: Dial: 602-506-9695 (local) 1-855-506-9695 (toll free long distance) Dial Collaboration (conference) Code 357264#

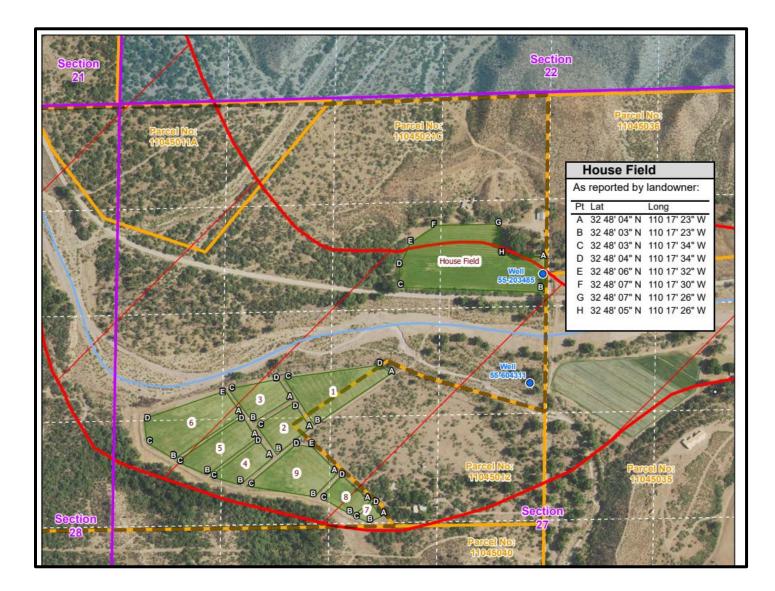
The trustees of the Magoffin Trust shall be prepared to state at the Status Conference whether they intend to pursue a water right with well registration no. 55-604314 (the Long Hollow well) as the source of water. If the trustees intend to pursue a water right and the well is located outside the subflow zone, the case will be stayed. If the trustees intend to pursue a water right and the well is located within the boundaries of the subflow zone, the trustees shall be prepared to identify the legal basis of their claim for the water and the efforts undertaken to contact the parties in this case to determine whether the parties will stipulate to a proposed abstract. The objecting parties in this case, after reviewing the Report and the information from the Cataloged Well Report, Vol. 8 1991 San Pedro HSR, shall be prepared to discuss whether an amended Report must be prepared in this case.

A copy of this order is mailed to all parties on the Court-approved mailing list for this contested case.

*Ex parte* communications with the court about this case are forbidden.

**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.

### ATTACHMENT A



## ATTACHMENT B

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## ATTACHMENT C

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# ATTACHMENT D



### **Court Connect Hearing Notice for In re Karen C. LeCount**

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 Karen C. LeCount, Contested Case No. W1-11-3395 Start Date/Time: February 3, 2022 at 1:30 p.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

