

1                   **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
2                                   **IN AND FOR THE COUNTY OF MARICOPA**

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5   IN RE THE GENERAL ADJUDICATION  
6   OF ALL RIGHTS TO USE WATER IN THE  
7   GILA RIVER SYSTEM AND SOURCE

CIVIL NO. W1-11-19  
(Consolidated)  
ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTION FOR CLARIFICATION

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11   CONTESTED CASE NAME: *In re Sands Group of Cases.*

12   HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

13   DESCRIPTIVE SUMMARY: Salt River Project filed a motion to clarify the Special  
14   Master's Order dated June 17, 2016 with respect to two issues. The motion is granted in  
15   part and denied in part.

16   NUMBER OF PAGES: 5

17   DATE OF FILING: July 29, 2016  
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21           By Order dated June 17, 2016 (the June Order), the second phase of this case was  
22   initiated. On July 5, 2016, Salt River Project Agricultural Improvement and Power District and  
23   Salt River Valley Water Users' Association (SRP) filed a motion seeking clarification of the  
24   June Order with respect to two issues.

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26           The first issue raised by SRP concerns the order to Arizona Department of Water  
27   Resources (ADWR) to serve a notice and summons on the persons listed in Appendix C to the  
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1 June Order and certain lessees identified by the United States and the Arizona State Land  
2 Department. While SRP does not object to the notice provided to the listed persons, SRP  
3 argues that no such notice is required by applicable law and thus requests that the June Order be  
4 revised to state that such additional notice is being given as a matter of courtesy and will not  
5 necessarily be provided in future proceedings. Although no party filed a response to SRP's  
6 motion, when the Special Master last contemplated taking action in this case in 2011, the  
7 following argument was made:  
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9 Before any *de minimis* issues are further litigated, ADWR should first, at a minimum,  
10 determine who owns the real property to which such water rights are appurtenant and  
11 then provide those property owners with notice of such proceedings. Anything less raises  
12 due process issues.

13 Joinder in Comments of Bayless & Berkalew Company on the Arizona Department of Water  
14 Resources Implementation of Summary Adjudication Process for De Minimis Uses, p. 3, filed  
15 November 8, 2011.

16 Clearly, due process must be accorded to persons with respect to their water rights. *See In*  
17 *the Matter of the Rights To The Use Of The Gila River*, 171 Ariz. 230, 830 P.2d 442 (1992).  
18 Determining the scope of the required due process is critical given the scope of this  
19 Adjudication and related expense. *Id.* The Court has previously addressed the status of  
20 successors in interest to the property owners who received the original notice provided when  
21 this Adjudication was initiated. The Court determined that successors to those original property  
22 owners are parties to this case and bound by the Adjudication. Order re: Fifth Set of Issues for  
23 Decision, dated August 5, 1989, p. 20 (1989 Order). Subsequently, the Court issued Pre-Trial  
24 Order No. 4 Re: Notification and Correction of Address Changes, dated March 29, 2000, that  
25 requires claimants to notify ADWR of a change in ownership of land for which a claim for  
26 water rights has been made and approved a simple form to assign claims for water rights. The  
27 issue which has now arisen is that in this case there are original parties who transferred land and  
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1 neither the original landowner nor that party's successor in interest notified ADWR of the  
2 transfer or filed an assignment of the claim with ADWR. Consequently, the identity of the  
3 successor in interest to the water right cannot be determined by relying on the procedures  
4 established in this Adjudication.

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6 In this particular case, there is a long history of the parties committing time, effort and  
7 resources to resolving their water rights. As a result, the Court undertook the work of  
8 reviewing hundreds of public records in an attempt to make a preliminary determination of the  
9 current ownership of the land for which statements of claimant have asserted appurtenant water  
10 rights. Appendix C is the result of that effort with its short list of new landowners. Given the  
11 circumstances and the minimal cost involved, it was determined that the best course of action  
12 was to provide notice to the limited number of persons to address concerns raised in 2011 and to  
13 expedite the most accurate adjudication of water rights in this case. As stated in the 1989 Order  
14 and as correctly asserted by SRP, those persons named on Appendix C who are in fact  
15 successors in interest to original parties are parties to this proceeding even in the absence of the  
16 new summons. Those parties should file, in accordance with Pre-Trial Order No. 4, an  
17 assignment rather than a new statement of claim.

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19 In this Adjudication, a careful balance has been crafted between the need to provide due  
20 process and the burden that may be imposed on the State by unwarranted due process measures.  
21 Fully appreciating the importance of maintaining this balance and the need to avoid the creation  
22 of unnecessary issues with their attendant costs, the question of whether any additional notice  
23 must be provided to landowners, who effectively received notice of this Adjudication due to the  
24 *lis pendens* filed in each county, but do not have an assignment on file with ADWR is not an  
25 issue that needs to be addressed at this time. If and when appropriate in this Adjudication, the  
26 issue will be addressed with the opportunity for briefing and additional hearings.  
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1 Consequently, the June Order shall not be construed as a precedent establishing any  
2 requirements for if, when or how often new landowners should be provided additional notice.

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4 The second issue deals with a statement regarding claims based on water rights based on a  
5 well as a water source. This consolidated adjudication includes all water rights to water in the  
6 Salt, Verde, Gila, Agua Fria, Upper Santa Cruz and San Pedro river watersheds appropriable  
7 under A.R.S. §45-141 and all water subject to claims based on federal law. A.R.S. §45-251(7).  
8 Given that among the hundreds of claims included within this case a claim for a water right may  
9 be asserted based on federal law and the importance of maintaining a consistent description of  
10 the scope of this Adjudication, SRP's motion on this issue is granted.  
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12 **IT IS ORDERED** granting SRP's motion in part and denying it in part:  
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- 14 1. The Order dated June 17, 2016, shall not constitute precedent regarding the issue of  
15 additional notice, the rationale for the giving of notice is stricken and alternative  
16 procedures may be followed in the future to address water claims where compliance  
17 with Pre-Trial Order No. 4 is absent.  
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- 19 2. The Order dated June 17, 2016, shall be modified to provide that if a decision is  
20 reached that a particular well does not draw subflow or water subject to claims based  
21 on federal law then an order will be entered deleting the water right from this  
22 Adjudication.  
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27 Susan Ward Harris  
28 Special Master

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On July 29, 2016, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-19.