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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

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-11-0245

(Consolidated with Contested Case No. W1-11-
-3397)

NOTICE OF DESIGNATION OF ISSUES OF
BROAD LEGAL IMPORTANCE

CONTESTED CASE NAME: *In re Town of Huachuca & In re Whiting Ranches*
(consolidated)

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: Notice is given that two issues have been designated as ones of
broad legal importance in this general adjudication.
NUMBER OF PAGES: 5

DATE OF FILING: June 18, 2020

1 This consolidated case presents two situations involving owners of wells located within the
2 subflow zone for which no showing has been made that the well owners filed for appropriate
3 water rights.

4 **Town of Huachuca City**

5 According to the Disclosure Statement filed by the Town of Huachuca (“Town”), the Town
6 has been the local water provider for nearly 60 years. Four production wells that the Town stated
7 were drilled prior to 1976 provide the source of water. The report prepared by Arizona Department
8 of Water Resources included in the San Pedro Hydrographic Survey Report (Nov. 20, 1991)
9 identified 1957 as the date of first apparent use. The Town registered the wells in 1982 and
10 represents that it has consistently maintained that the wells pump groundwater. The Arizona
11 Department of Water Resources (“ADWR”) determined that two of the wells listed in its report
12 are located in the subflow zone which constitutes clear and convincing evidence that the wells are
13 pumping appropriable water. *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys.*
14 *& Source*, 198 Ariz. 330, 343, ¶ 6, 9 P.3d 1069, 1082 (2000). The Town has the burden of proof
15 to demonstrate that either the wells are not in the subflow zone or are not pumping subflow. *Id.*
16 The Town represents that the town residents have invested vast amounts of money to install and
17 maintain its municipal water system and argues that if the Court determines that the wells are
18 pumping subflow, the Town should be entitled to an appropriate right with a priority date
19 corresponding to the date the well was drilled or first beneficial use because it relied on the strong
20 presumption that the wells pumped groundwater.

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23 **Whiting Ranches**

24 According to the Disclosure Statement filed by Michael and Susan Cavender, the property
25 involved in this case is a cattle ranch that has been in operation for over a century. The ranch is
26 located upstream of Aravaipa Canyon and the owners are dependent on wells for domestic,
27 farming, and ranching needs. The report prepared by ADWR included in the San Pedro
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1 Hydrographic Survey Report listed wells 01, 02, and 03 as the source of water for irrigation and
2 subsequently identified wells 01 and 02 as located in the subflow zone. The Cavenders argue that
3 the wells were drilled and permitted in compliance with the 1945 Groundwater Act and that the
4 wells pump percolating groundwater and they are entitled to withdraw a sufficient amount to
5 supply all present and future reasonable uses of their property.

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7 **Issue**

8 Each of these cases present a situation where wells were drilled after 1919 and the owners
9 believed that the wells pumped percolating groundwater. The parties further represent that they
10 have complied with the rules governing wells that pump percolating groundwater. Each case
11 involves wells located in the subflow zone. Objections to the reports filed by ADWR include
12 objections to the absence of Water Rights Registration or any reported filings by the claimants
13 establishing a right to appropriable water. *See, e.g.*, Objections filed by the United States, the
14 Gila River Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, Yavapai-Apache
15 Indian Community and Camp Verde Reservation on May 12, 1992 in W1-11-0245 and the Gila
16 River Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, Yavapai-Apache Indian
17 Community and Camp Verde Reservation on May 13, 1992 in W1-11-3397. The objections by the
18 parties in this case raise an issue that is one of broad legal importance that should be resolved.

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21 Pursuant to Rules for Proceedings Before the Special Master §12.03, the Master may
22 designate an issue raised by objections, Watershed File Reports or motions as an issue of broad
23 legal significance to claimants throughout the river system being adjudicated or to litigants in other
24 river system adjudications in Arizona. An issue of broad legal importance is defined as one that
25 has procedural or substantive significance that is similar to issues in other contested cases and may
26 establish a precedent for other contested cases in that river system. *Id.* at §12.01. In this case,
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1 the objections and positions taken by the parties raise legal issues that may affect numerous
2 claimants in this general adjudication who relied on the strong presumption that water withdrawn
3 from a well is percolating groundwater but now seek an appropriative water right to be decreed in
4 this adjudication for water pumped from a well located in the subflow zone.

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6 IT IS ORDERED designating the following issues as ones of broad legal importance.
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9 Is the process set out in the 1919 Arizona Surface Water Code and subsequent
10 versions of that statute the exclusive method for a well owner who has filed a
11 statement of claimant under A.R.S. §45-254 to obtain an appropriative water right in
12 Arizona for water pumped from a well located in the subflow zone with a priority
13 date after June 12, 1919?
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16 Does the adjudication court have equitable powers to decree an appropriative
17 water right for a claimant who began withdrawing water from a well located in the
18 subflow zone after June 12, 1919, but did not comply with the 1919 Arizona Surface
19 Water Code and subsequent versions of that statute?
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23 Any claimant in the general adjudications may respond to these issues by filing a Response
24 with copies to all persons listed on the Court-approved mailing list for W-1, W-2, W-3 and W-4
25 and CV-6417.
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1 IT IS FURTHER ORDERED that Responses to the issue shall be filed by **August 11, 2020**,
2 and replies shall be filed by **September 8, 2020**.

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6 SUSAN WARD HARRIS
7 Special Master

8 On June 18, 2020 the original of the foregoing was
9 delivered to the Clerk of the Maricopa County Superior
10 Court for filing and distributing a copy to all persons listed
11 on the Court-approved mailing list for this contested case
12 and to the Court-approved mailing list for W-1, W-2, W-3
and W-4 as required by Rules for Proceedings Before the
Special Master §12.03.

13 In addition, this Notice was filed with the Clerk of the
14 Apache County Superior Court for filing and distributing a
15 copy to all person listed on the Court-approved mailing list
for CV 6417.

16 In addition, courtesy copies of the Notice were sent
17 to all persons listed on the Court-approved mailing
18 lists for contested cases W1-11-3115, W1-11-3117,
W1-11-3119, W1-11-3123, W1-11-3124, W1-11-
3125, W1-11-3126, W1-11-3199, and W1-11-3203.

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20 Barbara Brown