

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

March 5, 2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

T. DeRaddo
Deputy

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

Status Conference in In re Magoffin II
Contested Case No. W1-11-3367

FILED: 3/5/2021

MINUTE ENTRY

Courtroom CCB - 301

2:00 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris. All parties appear telephonically/virtually. Appearances are as follows:

- Joseph Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Mark McGinnis on behalf of SRP
- Kimberly Parks on behalf of ADWR
- Bradley Pew on behalf of Asarco

W1-11-3367 In re Karen LeCount

March 5 2021

- Leroy D. Zachek on behalf of the Zachek Family Living Trust
- Anna Magoffin on behalf of the Magoffin Family Trust
- Richard Palmer on behalf of the Tonto Apache Tribe
- Sue Montgomery on behalf of the Yavapai Apache Nation and observing for the Pascua Yaqui Tribe
- John Burnside observing for BHP Copper

The Arizona Department of Water Resources has provided a map that shows that the Zachek Family Living Trust and the Magoffin Family Trust are owners of the land at issue. Both trustees have filed claims for water rights. The Zacheks filed a claim for stock watering on the property. ADWR found a stock watering right. The Zacheks filed a statement of claimant (“SOC”).

Discussion is held regarding using the *de minimis* procedure for issuing an abstract for a stock watering right. No objections were made.

ADWR found a domestic use on the property. The Zacheks filed a SOC for domestic use; however, there is no filing to establish a legal basis for the right and the amount exceeds the *de minimis* amount. The source is a well. Mr. Zachek states that the well is inside the subflow zone. Mr. Zachek made a claim for an amount which is greater than one-acre foot of water per year. Mr. Zachek states on the record that he will change his SOC to one-acre foot so he may use the *de minimis* procedure.

Kimberly Parks states that Mr. Zachek should file a form “36” with ADWR Surface Water Division, unless he has a historical document. Mr. Zachek will file a claim based on a pre-1919 beneficial use based on an historical document.

Ms. Parks states that in addition to filing a Statement of Claim, Mr. Zachek needs to have a basis for the right in filing a claim, such as a Notice of Appropriation showing water use on the land, or use the 36 form. Ms. Magoffin filed a patent.

Mr. Zachek states that he has documents ready to be filed.

Mr. McGinnis states that he believes Mr. Zachek does not need to file anything more than the Statement of Claim and the patent. Due to the fact that this is pre-1919, he may not need to file an application. He should file the Form 36 with the pre-1919 date. Discussion is held.

Mr. Zachek shall file his Statement of Claim and a copy of the patent with ADWR. The Court will review the documents once they are included in ADWR’s public records. The Court will move forward with the *de minimis* procedure, prepare the abstracts and distribute them among the other parties/objectors for suggested corrections.

The Court reports that ADWR did not find any claims on this property for irrigation use.

Mr. McGinnis states that once the documents are filed, a meeting should be held with the objectors to work through the ownership issue. Ms. Parks states that she will coordinate a meeting between the Zachek claimants and the objectors, and file a Meeting Report by the end of April.

Ms. Magoffin also has a claim for irrigation water rights. She states that she has documents to establish prior irrigation use. Ms. Magoffin reports that she will file for the stock pond, and not file for irrigation use. Ms. Magoffin states that she has certificates regarding prior stock pond use.

Discussion is held regarding a 3 acre parcel in Section 27. Ms. Magoffin is now saying that she is not asking for water for 3 acres of irrigation on Section 27 included within the boundaries of this watershed file report; instead, she will file for the stock pond use. The Court reports that there is no record of prior claims with a stock pond use. Ms. Magoffin states that in section 27 she has the certificate of stock pond water right. (Certificate #38-96721). (1.9 acre feet) Ms. Magoffin states that she filed a Statement of Claimant for stock pond use.

Mr. McGinnis and Mr. Sparks agree that the *de minimis* procedure may be followed. Mr. Palmer and Ms. Montgomery agree.

Mr. Zachek states that his two irrigation wells do not appear to be in the sub flow zone.

Kimberly Parks of ADWR states that ADWR will prepare a map to show the location of the wells relative to the subflow zone. If the wells are outside of the subflow zone, then no meeting is necessary with respect to the Zacheks' claims for water rights.

If the wells are outside of the subflow zone, this case will be stayed with respect to the Zacheks' claims and the Court will take no action on Mr. Zachek's claims for water rights at this time.

2:28 p.m. Matter concludes.

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.