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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

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case No. W1-11-3382

ORDER TO SEPARATE
CONTESTED CASES;
ORDER TO CONSOLIDATE
CASES; ORDER TO SET A
SCHEDULING CONFERENCE

CONTESTED CASE NAME: *In re Arizona Chapter of the Nature Conservancy – Agro Land*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.
DESCRIPTIVE SUMMARY: Order to remove and separate contested cases W1-11-3382, W1-11-3383 and W1-11-3384 from case no. W1-11-3377. All future filings for contested cases W1-11-3382, W1-11-3383 and W1-11-3384 shall be filed in this contested case W1-11-3382.
Order that TNC shall file revised abstracts and setting a scheduling conference for **March 20, 2019**, if the parties do not withdraw objections to the water characteristics listed in the proposed abstracts.
NUMBER OF PAGES: 13
DATE OF FILING: February 7, 2019

1 This contested case includes claims for rights to water for irrigation and domestic uses
2 analyzed by Watershed File Reports Nos. 115-05-AC-003, 115-05-AC-004, and 115-05-AC-005
3 included in the final hydrographic survey report for the San Pedro Watershed (“San Pedro HSR”)
4 filed on November 20, 1991.
5

6 **PROCEDURAL BACKGROUND**

7

8 On February 28, 2017, three contested cases were initiated to adjudicate the claims for
9 water rights analyzed in 115-05-AB-001, 115-05-AC-004, and 115-05-AC-005. On May 25,
10 2017, a fourth contested case was initiated to adjudicate the claims for water rights analyzed in
11 115-05-AC-003. The contested cases were W1-11-3377, W1-11-3383, W1-11-3384, and W1-11-
12 3382, respectively.
13

14 On February 15, 2018, the Arizona Chapter of the Nature Conservancy (TNC) filed
15 consolidated abstracts of statements of claimant listing eight potential water rights for irrigation
16 uses and five potential water rights for domestic uses that were investigated in the four watershed
17 file reports listed above. By order dated March 14, 2018, the four contested cases initiated to
18 resolve objections to 115-05-AB-001, 115-05-AC-003, 115-05-AC-004, and 115-05-AC-005
19 were consolidated into a single case on the grounds that the cases involved the same types of
20 water uses by the same claimant. On April 4, 2018, a status conference was held at which TNC
21 and the parties who had filed objections to the watershed file reports represented that they had
22 resolved their disputes based on the consolidated abstracts filed by TNC. Using the consolidated
23 abstracts prepared by TNC, draft abstracts for individual water rights were prepared and issued on
24 April 19, 2018 and June 14, 2018 for review by the Arizona Department of Water Resources
25 (ADWR). On May 21, 2018 and June 29, 2019, ADWR submitted reports analyzing the draft
26 abstracts. Revised draft abstracts were issued to the parties for suggested corrections.
27
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1 The San Carlos Apache Tribe and Tonto Apache Tribe (the Tribes) filed an objection to
2 ADWR's Report because the abstracts for the claimed water rights did not provide the following
3 information:

- 4 1. A legal description of the land that is the place of use or, alternatively, GPS
5 coordinates for the corners of the place of use;
- 6 2. Points of diversion defined by the quarter, quarter, quarter USGS section, township
7 and range;
- 8 3. The total acreage of the land and maximum rates of diversion for irrigation uses; and
- 9 4. A map showing the place of use and the points of diversion.

10
11 In response to the Tribes' objections, TNC filed revised abstracts, maps and an affidavit by Mark
12 Haberstick, the manager of the Aravaipa Canyon Preserve. For each proposed water right, TNC
13 provided GPS coordinates using the UTM NAD 83 coordinate system for zone 12N for the
14 corners of the places of use and the points of diversion, total acreage for irrigation uses and most
15 of the domestic uses, and maps. It did not provide the maximum diversion rate for any of the
16 proposed water rights.
17

18 On February 5, 2019, contested case no. W1-11-3377 was separated from these
19 consolidated cases because it presented issues regarding land ownership not present in these
20 contested cases. The watershed file reports now at issue in this case are WFR 115-05-AC-003,
21 115-05-AC-004, and 115-05-AC-005. Specifically, the potential water rights claimed by TNC for
22 which water right characteristics must be determined are the following:
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Irrigation Claims

| Potential Water Right (PWR) | Statement of Claimant |
|-----------------------------|-----------------------|
| 115-05-AC-003-IR001 | 39-12291 |
| 115-05-AC-003-IR002 | 39-1496 |
| 115-05-AC-003-IR003 | 39-12285 |
| 115-05-AC-004-IR001 | 39-3958 |

Domestic Claims

| Potential Water Right (PWR) | Statement of Claimant |
|-----------------------------|----------------------------|
| 115-05-AC-003-DM001 (3) | 39-1494, 39-1495, 39-12285 |
| 115-05-AC-004-DM001 | 39-3974 |
| 115-05-AC-005-DM001 | 39-2645 |
| 115-05-AC-005-DM002 | 39-5513 |
| 115-05-AC-005- DM003 | 39-5514, 39-5522 |

115-05-AC-003

The Arizona Chapter of The Nature Conservancy claims three irrigation uses and domestic uses included in WFR 1150-05-AC-003.

A. Irrigation Uses

The primary difference between the places of use listed by ADWR and TNC in the proposed abstracts arises from the portions of the quarter, quarter section of sec. 36 T6S R19E designated among the three potential water rights for irrigation use. The map prepared for WFR 1150-05-AC-003 is attached as Attachment A and the map prepared by TNC is attached as

1 Attachment B. In its draft, TNC added NWSE sec. 36 T6S R19E to the description of the place
2 of use for potential water rights ending IR001 and IR002. That quarter, quarter section is also
3 included in the description of the place of use for potential water right ending IR003. It also
4 proposed eliminating two quarter, quarter sections in sec. 36 T6S R19E from the potential water
5 right ending IR003 because those places of use are included in the two other potential water
6 rights. Given that the priority dates among the three irrigation uses differ, TNC is instructed to
7 submit proposed water right abstracts for IR001 and IR002 that have a common priority date of
8 December 31, 1936, or separately map IR001 and IR002.
9

10 B. Domestic Uses

11 In its revised abstracts, TNC claims three domestic uses on the property to provide water
12 for an office, two cabins, and a barn in the first domestic use. Based on TNC's map, the buildings
13 appear to be clustered relatively close together at a corner where four quarter, quarter sections
14 meet: NENE, SENE, SWNW, and NWNW. The revisions to the remaining two domestic uses
15 replace the GPS coordinate for the well with GPS coordinates in UTM NAD 83 format. TNC is
16 instructed to submit a replacement map for 115-05-AC-003-DM001 (2 of 3) that includes the
17 acreage of the outdoor water area.
18
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20 **115-05-AC-005**

21 The land involved in this watershed file report encompasses sections 21, 27, 28, 34, and
22 35 T6S R19E. Included in TNC's response are proposed abstracts for two domestic uses. In both
23 cases, the wells, which are the sources of water, are located close to the boundary of a quarter
24 quarter section. In each case, TNC has mapped the location of the well in the quarter quarter
25 section adjoining the quarter quarter section designated by ADWR.
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1 In its Response, TNC did not provide a map of or any revisions to proposed abstract 115-
2 04-AC-005-DM001, a copy of which is attached as attachment C. It did, however, provide a
3 revised abstract for 115-05-AB-001-DM001 that shows a well in the SWSE section 21 T6S R
4 19E, which is the same general location of the well identified by ADWR for 115-04-AC-005-
5 DM001. According to the map provided by TNC, the outdoor watering use consists of 0.86
6 acres. The map does not show a separate place of use or acreage for irrigation use.
7

8 Accordingly,

9 **IT IS ORDERED** that W1-11-3382, W1-11-3383 and W1-11-3384 shall be severed from
10 contested case W1-11-3377 and consolidated as contested case *In re Arizona Chapter of the*
11 *Nature Conservancy – Agro Land*, contested case no. W1-11-3382.
12

13 **IT IS FURTHER ORDERED** that by **March 8, 2019**, TNC shall file a Report that
14 includes:

- 15 1. Revised draft abstracts for the proposed water rights that include the maximum
16 rates of diversion for each water use;
- 17 2. Abstracts for 115-05-AC-003-IR001 and 115-05-AC-003-IR002 that either
18 have a priority date of December 31, 1936 or separately mapped areas for each
19 irrigation use;
- 20 3. An explanation about whether the information in its abstract and map for 115-
21 05-AB-001-DM001 is intended as the information for an abstract of 115-05-
22 AC-005-DM001; and
- 23 4. The proposed water right, statement of claimant and basis for a claim for an
24 irrigation use that is the subject of the abstract attached to its Response as 115-
25 05-AB-001-IR001.
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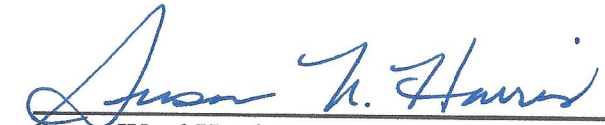
1 **IT IS FURTHER ORDERED** that the parties either file by **March 18, 2019**, a statement
2 that all objections to the proposed abstracts filed by TNC and to watershed file reports 115-05-
3 AC-003, 115-05-AC-004, and 115-05-AC-005 have been resolved or withdrawn or attend a
4 scheduling conference on **March 20, 2019** at 11:00 a.m. in the Superior Court of Arizona, Central
5 Court Building, Courtroom 301, 201 West Jefferson Street, Phoenix, AZ 85003-2202 for the
6 purpose of identifying those issues in dispute and setting a schedule to resolve those issues.
7

8
9 Instructions for telephonic participation:

10 Dial: 602-506-9695 (local)

11 1-855-506-9695 (toll free long distance)

12 Dial Collaboration (conference) Code 357264#
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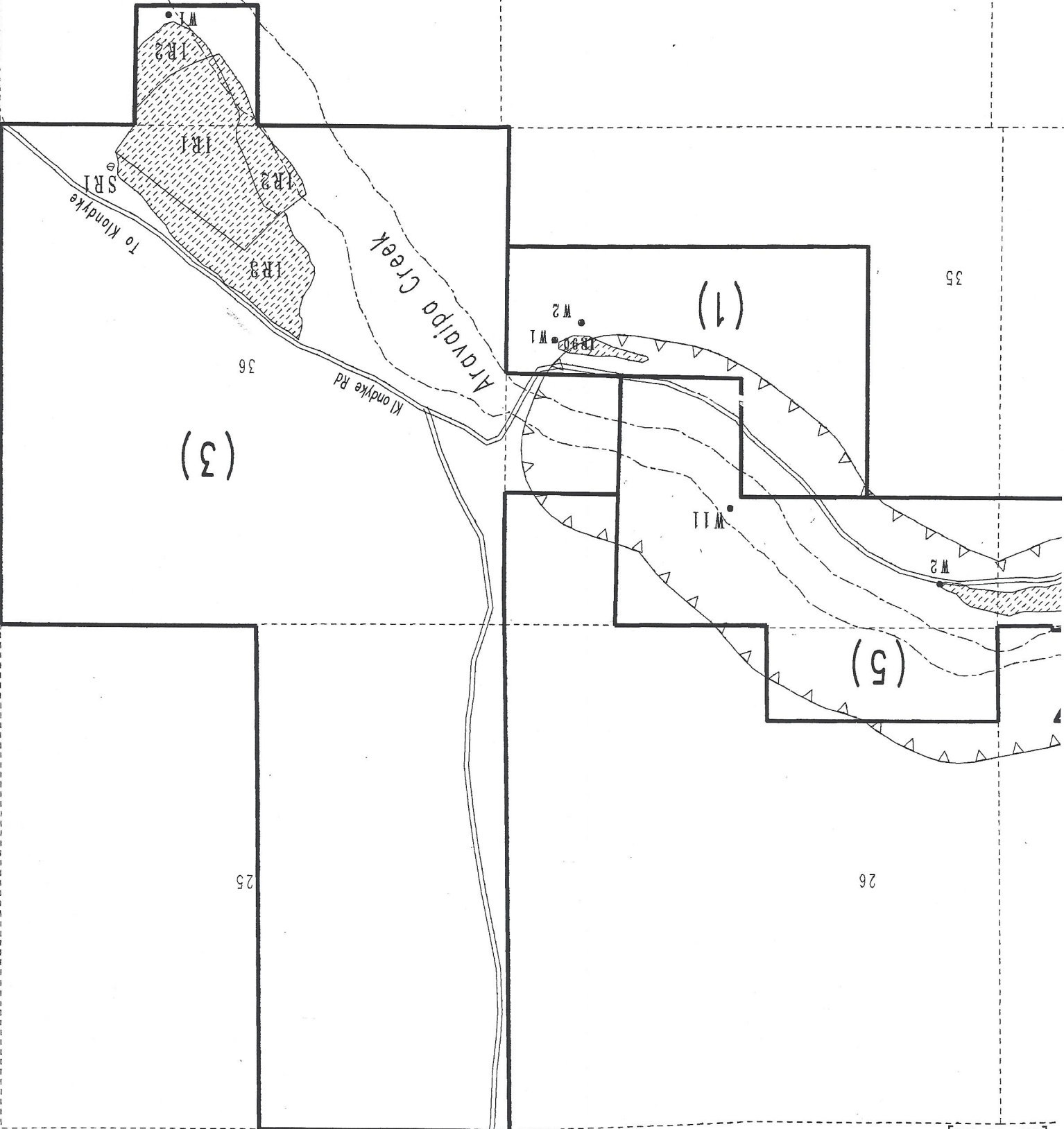
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17 
18 Susan Ward Harris
19 Special Master
20

21 The original of the foregoing was delivered to the Clerk
22 of the Maricopa County Superior Court on February 7,
23 2019, for filing and distributing a copy to all persons
24 listed on the Court approved mailing list for this
25 contested case.
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ATTACHMENT A

[115-05-ADC]



[115-05-AB]

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ATTACHMENT B

115-05-AC-003-IR001, IR002 & IR003
 Topographical Survey in th Southeast Quarter
 and Southwest Quarter of Section 36
 Township 6 South, Range 19 East
 And the Northeast Quarter of Section 1
 Township 7 South, Range 19 East
 Graham County, Arizona

Assessor's Parcel 110-14-014

NENE

115-05-AC-003-IR003
 Place of Use (Irrigation on 19.93 acres)

Point 1 - 559693 Easting, 3636647 Northing
 Point 2 - 559897 Easting, 3636856 Northing
 Point 3 - 560153 Easting, 3636682 Northing
 Point 4 - 559813 Easting, 3636499 Northing

Assessor's Parcel 110-14-017

IR003
 Place of Use

T6S R19E Section 36

NWSW
 Point of Diversion for IR003
 Well 55-500877
 GPS 559691E 3636635N

SW1/4 Sec 36

SE1/4 Sec 36

NESE

SWSW

SESW

SWSE

SESE

IR001 & IR002
 Place of Use

Point of Diversion for IR001 & IR002
 Well 55-647915
 GPS 560333E 3635826N

115-05-AC-003-IR001 & IR002
 Place of Use (Irrigation on 62.64 acres)

Point 1 - 559891 Easting, 3636354 Northing
 Point 2 - 560294 Easting, 3635798 Northing
 Point 3 - 560384 Easting, 3636129 Northing
 Point 4 - 560598 Easting, 3636136 Northing
 Point 5 - 560156 Easting, 3636657 Northing

Assessor's Parcel 110-39-002

Assessor's Parcel 110-39-003

NE1/4 Sec 1

0 0.3 0.6 Miles

T7S R19E

- Place of Use - GPS locations
- ▲ Point of Diversion - GPS locations
- Place of Use Areas
- PLSS Sections
- PLSS Quarter quarter sections
- Aravaipa Preserve dedeed lands (TNC fee owned)

NORTH

Area Overview T6S R19E

| | | | | | | | |
|-------|----|----|----|----|----|----|-------|
| 07 08 | 09 | 10 | 11 | 12 | 18 | 17 | 16 15 |
| 18 17 | 16 | 15 | 14 | 13 | 18 | 17 | 16 15 |
| 19 20 | 21 | 22 | 23 | 24 | 19 | 20 | 21 22 |
| 30 29 | 28 | 27 | 26 | 25 | 30 | 29 | 28 27 |
| 31 32 | 33 | 34 | 35 | 36 | 31 | 32 | 33 34 |
| 06 05 | 04 | 03 | 02 | 01 | 06 | 05 | 04 03 |
| 07 08 | 09 | 10 | 11 | 12 | 07 | 08 | 09 |
| 18 17 | 16 | 15 | 14 | 13 | 18 | 17 | 16 15 |
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Map by:
 The Nature Conservancy 11/20/2018
 GPS data collected 10/8/2018
 GPS Coordinates in UTM NAD 83 Zone 12 N
 Topographic map: USGS National Boundaries dataset

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ATTACHMENT C

Abstract of Water Right
San Pedro Watershed

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|-----------------------------------|------------------------|
| 1. Proposed Water Right No: | 115-05-AC-005-DM001 |
| 2. Owner of Water Right: | The Nature Conservancy |
| 3. Landowner: | The Nature Conservancy |
| 4. Statement of Claimant No.(s): | 39-5518 |
| 5. Statement of Claimant Name(s): | The Nature Conservancy |
| 6. Lessee or Permittee: | None |
| 7. Basis of Right: | 36-37262 |
| 8. Beneficial Use | Domestic Use |
| 9. Priority Date | December 31, 1880 |
| 10. Quantity: | 5 acre feet annually |
| 11. Place of Use: | SWSE 21 T6S R19E |
| 12. Point of Diversion: | SWSE 21 T6S R19E |
| 13. Source of Water: | Well |
| 14. Name of Facility: | none |
| | |