

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

02/20/2020

CLERK OF THE COURT

SPECIAL WATER MASTER  
SUSAN WARD HARRIS

Lorrie Stogsdill  
Deputy

In re: Elizabeth Hilliard  
Contested Case No. W1-11-3385

FILED: February 26, 2020

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

In re: Status Conference

**MINUTE ENTRY**

Central Court Building – Courtroom 301

1:42 p.m. This is the time set for a Status Conference before Special Water Master Susan Ward Harris.

The following attorneys appear in person: Mark A. McGinnis for the Salt River Project.

The following attorneys appear telephonically: Carla A. Consoli for the Arizona Chapter of the Nature Conservancy, Kimberly R. Parks for ADWR, Bradley A. Pew for ASARCO, Joe P. Sparks for the San Carlos Apache Tribe, Jay Tomkus for the Pascua Yaqui Tribe and Yavapai-Apache Nation, John Burnside for BHP Copper, Elizabeth Hilliard and John Franzone, Jr., appear on their own behalf and Jan Rogers and Larri Tearman appear in their capacities as trustees.

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

The Court advises that Ms. Hilliard filed a Statement of Claimant (SOC) which was then assigned to Mr. Franzone. Mr. Franzone has registered the well. There was also a SOC filed by Nature Conservancy, 39-5516, but the Court does not believe that it applies to the subject property. Ms. Consoli agrees with the Court's position.

The Court notes that there is also a reference to a Statement of Claim 36-37258 filed by Nature Conservancy in the watershed file report prepared by Arizona Department of Water Resources. Ms. Consoli advises the Court that the Statement of Claim 36-37258 does not apply to the Hilliard property.

Ms. Hilliard stated that she believes that her use began in 1971 when she purchased the property.

The issue before the Court is whether there is basis of right.

The Court outlines three options to establish a basis of legal right to use appropriable water.

Mr. McGinnis does not have an objection to Mr. Franzone filing an application for appropriable water and stated that most people do not want to try and overcome the presumption regarding subflow. He recommends consolidation with another case possibly Whiting Ranch, or stay this case pending the legal resolutions in those cases. He further reported that when the parties met in October he thought the parties were going to look for a pre-1919 basis of right, but he does not know what they have found.

The Court advises Mr. Franzone that he needs an underlying right to use the water. The Court questions if he has any supporting documentation that water was used on his land pre-1919. Mr. Franzone says that there were people living there pre-1919. He does not believe there are any records in Graham County prior to 1958. Mr. Franzone further advises the Court he does not believe that his property is in the subflow zone. He said that the house he is living in was built in 1920 and it was not the original structure on the property. He said he is pretty sure that people were living there before the 1880s. He confirms he is claiming water for domestic water use only, not for irrigation. He also says that he has no stock.

The Court asked Ms. Consoli whether The Nature Conservancy has copies of any patents that apply to Mr. Franzone's land.

Ms. Tearman advises the Court that they did locate a 1921 survey done by the Water Commission indicating extensive settlement along Aravaipa Creek. The Court suggests that the parties contact the National Archives to obtain supporting documentation for use of water pre-1919.

The Court provides options for the parties to obtain the supporting documentation they need and gives the parties 60 days to try to locate such documentation and then proceed further with this case. The Court also provided an explanation of the development of the subflow zone.

Mr. Franzone discussed a BLM report that may have information about historical water use.

The Court states that there will be no irrigation rights issued in connection with the land. Mr. Franzone stated that he had no objection.

**IT IS FURTHER ORDERED** that there will be no irrigation rights issued relative to Mr. Franzone's land and any proposed water right will be for domestic water rights only.

Ms. Consoli requests that the parties provide a map outlining the properties at issue, so she can provide it to her real estate specialist. Ms. Parks advises that there are maps with the WFR overlay prepared in September 2019 available on line.

Ms. Tearman states that she found inaccuracies in ADWR's report provided to her and questions the Court how to correct them. She stated that the properties never shared a well. There was a well drilled on her grandmother's land.

The Court addresses Ms. Tearman's concerns and confirms that the Meeting Report of October 8, 2019, does not indicate that those properties share a well.

Ms. Tearman said that the Meeting Report stated that her grandfather and brother dug a second well on the Bryce property. She said the statement is not accurate because a company drilled a well, it was not hand dug.

Ms. Hilliard stated that she did not share a well with Ms. Bryce. She also said that there was a well on her property when she bought the property in 1971 and the well was not washed out in the 1983 flood.

2:08 p.m. Matter concludes.

LATER:

Historical information may be available about the settlement of the land from the following contact:

George Shaner  
Archives Specialist  
700 Pennsylvania Ave, NW  
Washington, DC 20408  
202-357-5329  
george\_shaner@nara.gov

**IT IS ORDERED** that Mr. Franzone, Jr. shall file a status report with the court describing his efforts to obtain information about use of water on his property prior to 1919 and the results of those efforts. The address for the Clerk of the Court is:

Clerk of the Superior Court  
Maricopa County  
Attn: Water Case  
601 West Jackson Street  
Phoenix, AZ 85003

1. The status report is due **April 24, 2020**.
2. The status report must have the following statement on the first page:  
**In re: Elizabeth Hilliard, Contested Case No. W1-11-3385**
3. A copy of the status report must be mailed to each of the following:

Carla Consoli and Stanley Lutz  
Lewis Roca Rothgerber  
Christie, LLP  
201 East Washington Street,  
Ste. 1200  
Phoenix, AZ 85004

F. Patrick Barry, Emmi Blades  
US Department of Justice  
Environment & Natural  
Resources  
P. O. Box 7611  
Washington, DC 20044-7611

Joe P. Sparks and Laurel A.  
Herrmann  
The Sparks Law Firm, P.C.  
7503 First Street  
Scottsdale, AZ 85251-4573

John B. Weldon, Jr. and Mark  
A. McGinnis  
Salmon, Lewis & Weldon PLC  
2850 E Camelback Rd, Ste 200  
Phoenix, AZ 85016

John D. Burnside  
Snell & Wilmer, L. L. P.  
400 E. Van Buren Street, Ste 1900  
Phoenix, AZ 85004  
Kimberly R. Parks  
Arizona Department of Water Resources  
P. O. Box 36020  
Phoenix, AZ 85067

L. J. Caster, B.J. Heiserman, B. J. Pew  
Fennemore Craig, P.C.  
2394 East Camelback Road, Ste 600  
Phoenix, AZ 85016-3429

L. Wm. Staudenmaier and John D. Burnside  
Snell & Wilmer, L. L. P.  
400 E. Van Buren Street, Ste 1900  
Phoenix, AZ 85004-2202

Linus Everling and Thomas L. Murphy  
Gila River Indian Community  
Office of the General Counsel  
P. O. Box 97  
Sacaton, AZ 85147

Lucas T. Christian and Julian Nava  
Rosette, LLP  
565 W. Chandler Blvd. Suite 212  
Chandler, AZ 85225

S. Montgomery, R. Interpreter, J. Tomkus  
Montgomery & Interpreter, PLC  
3301 E. Thunderbird Road  
Phoenix, AZ 85032

Susan Ward Harris  
Special Master  
Central Court Building, Ste 3A  
201 West Jefferson  
Phoenix, AZ 85003-2205

**IT IS FURTHER ORDERED** that the Delta Bryce shall be removed from the Court approved mailing list for this case because she is deceased.

**IT IS FURTHER ORDERED** that Jan Rogers and Larri Tearman shall be removed from the Court approved mailing list for this case. Delta Bryce, Jan Rogers and

Larri Tearman were included in the Court approved mailing list for this case because Arizona Department of Water Resources listed Statement of Claimant 39-2579, originally filed by Delta Bryce, in Watershed File Report 115-05-AC-006. The inclusion of Statement of Claimant 39-2579 meant that they may have been Claimants in this case. Based on their statements that there is no connection between the Mr. Franzone's property and the property previously owned by Delta Bryce and that they did not share a well, they are not Claimants in this contested case under the Statement of Claimant 39-2579. They make no claim to the use of water on the land owned by Mr. Franzone or to the land owned by Mr. Franzone.

**IT IS FURTHER ORDERED** that Elizabeth Hilliard shall be removed from the Court approved mailing list because she has assigned the relevant Statement of Claimant to John Franzone, Jr. and is thus no longer a Claimant.

A copy of this minute entry is provided to all parties on the Court approved mailing list.