

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

May 5, 2020

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER  
SUSAN HARRIS

L. Stogsdill

Deputy

In re: Reuben and Delta Bryce  
Contested Case No. W1-11-3386

FILED: May 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**

**Courtroom: CCB 301**

1:30 p.m. This is the time set for a Status Conference.

Appearances: All parties appear telephonically. Larri Tearman appears as Successor Trustee of the Logene Allen Trust, a Claimant, Sherri Zinger and Jan Rogers appear as Successor Co-Trustees of the Greta Bergan Trust, Claimants, Kerry Bryce appears on his own behalf and as the named successor to Sherri Zinger and Jan Rogers, Kimberly Parks for ADWR, Mark McGinnis for SRP, John D. Burnside for BHP Copper, Laurel A. Hermann and Joe P. Sparks for the San Carlos Apache Tribe, Richard Palmer for the Tonto Apache Tribe and Bradley Pew for ASARCO.

The Court explains the purpose of a status conference to the parties.

The Court also provides a brief summary of the status of the case.

Larri Tearman disconnects from the call.

Sherri Zinger and Jan Rogers address the Court briefly advising that they have no objections to the case status as outlined by the Court. Ms. Rogers describes the research she has undertaken to demonstrate the initial use of water on the property.

LET THE RECORD REFLECT that Larri Tearman has reconnected with the call.

Discussion is held regarding the subject well and if it is inside or outside the subflow zone. Ms. Tearman states that the well is located within the subflow zone based on a survey. The Court states that the map prepared by ADWR on September 26, 2019 shows the well as being outside as opposed to inside the subflow zone. Ms. Tearman states that it is her belief that ADWR shows the location of a well as the middle of the quarter quarter quarter section.

Ms. Parks confirms that the well's location was determined via the well registry program. She further advises that the subject map was filed with the Court.

The Court inquires if the Claimants wish to research if the well is in or out of the subflow zone.

Ms. Parks states that ADWR will provide an updated map upon receipt of the information from the Claimants.

It is suggested that another meeting between ADWR, the Claimants and the Objectors should be scheduled after the additional documents have been reviewed by ADWR.

1:55 p.m. Counsel advises the Court that they generally agree with the procedures/suggestions discussed.

1:59 p.m. The Court outlines what it believes to be the current issues in this matter.

Jan Rogers and Kerry Bryce address the Court.

For the reasons stated on the record,

**IT IS ORDERED** that the Claimants provide copies of all documents in their possession which they believe show the location of the well by **June 5, 2020**.

**IT IS FURTHER ORDERED** that upon review of the supplied documentation, ADWR shall confirm the location of the subject well as either inside or outside the subflow zone, and provide an updated map by **July 6, 2020**.

**IT IS FURTHER ORDERED** that ADWR will schedule a conference call with the parties to discuss the results of their review by **August 5, 2020**.

**IT IS FURTHER ORDERED** that any information provided by the Claimants to ADWR shall be scanned and emailed to all parties.

**LET THE RECORD REFLECT** that the Court will rely on the parties' avowal that they are current trustees of the Greta Bergan Trust and Logen Allen Trust.

**IT IS FURTHER ORDERED** that Sherri Zinger, 992 E. Divot Drive, Tempe, AZ 85283 shall be added to the Court approved mailing list.

Matter concludes: 2:12 p.m.

LATER: The issue in this case that arose during the course of the status conference is whether the well claimed as the source of water for the land is located within or outside of the subflow zone. As Larri Tearman correctly explained, different rules apply to determine a person's rights to use groundwater and surface water. Under the common law, a landowner is permitted to pump groundwater necessary for the reasonable use of the land.<sup>1</sup> A landowner must comply with a different set of rules or statutes to have a legal right to use surface water. Subflow is an exception to the statement that groundwater and surface water are governed by different rules.

The Arizona Supreme Court described subflow as the "waters which slowly find their way through the sand and gravel constituting the bed of the stream, or the lands under or immediately adjacent to the stream, and are themselves a part of the surface stream." As Ms. Tearman explained, subflow is presumed to be surface water. Thus, the rules that apply to water rights to surface water apply to water pumped from a well located in the subflow zone that is presumed to be pumping subflow.

As a result, before a determination can be made with respect to the rights to the water from the well, a determination must be made whether the water claimed in this case is surface water or groundwater. In other words, a decision must be made whether the water claimed in this case is subflow. If the case proceeds because the parties are claiming rights to subflow, then a determination will be made whether a legal right exists to the use of the water. Different rules govern the establishment of rights to surface water put to beneficial use prior to 1919 than to rights to surface water first put to beneficial use in later years.

A copy of this will be provided to all parties on the Court approved mailing list.

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<sup>1</sup> Different rules apply to wells located in Active Management Areas.