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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, W-2, W-3, W-4 (Consolidated)

Contested Case No. W1-11-3450

ORDER REGARDING CLAIMS FOR  
WATER RIGHTS TO BE ADJUDICATED

CONTESTED CASE NAME: *In re Anderson Development Corp.*  
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report  
DESCRIPTIVE SUMMARY: This contested case shall only adjudicate claims for water rights asserted by Bar Seven Cattle Company LLC for which the source of water is not a well.  
NUMBER OF PAGES: 5  
DATE OF FILING: March 26, 2020

This case concerns Watershed File Report 115-1-BA-001 (WFR) and the eight Statements of Claimant for rights to water for domestic, stock watering, and irrigation uses on land in sections 10, 11, 14, and 15 of Township 9S Range 21E listed in the WFR. Bar Seven Cattle Company,

1 LLC filed a notice that it will file assignments and amendments of the eight Statements of Claimant  
2 listed in the WFR with Arizona Department of Water Resources (“ADWR”).

### 3 4 **Additional Statements of Claimant**

#### 5 **1. Statements of Claimant 39-18071 and 39-18072**

6  
7 Charlie E. and Nancy L. Henson and Nancy J. Hunter filed new Statements of Claimant to  
8 claim rights to water on the property included within the boundaries of the land mapped by the  
9 WFR. Statements of Claimant 39-18071 and 39-18072 identify the source of the water for the  
10 claimed right as rain water with a 2010 priority date. Not all water is subject to appropriation and,  
11 therefore, to water rights under Arizona law. *Arizona Pub. Serv. Co. v. Long*, 160 Ariz. 429, 441,  
12 773 P.2d 988, 1000 (1989). Appropriable water to which water rights can attach is water “flowing  
13 in streams, canyons, ravines, or other natural channels, or in definite underground channels, whether  
14 perennial or intermittent, flood, waste, or surplus water, and of lakes, ponds and springs on the  
15 surface”. A.R.S. §45-101. Diffuse surface water from rainfall that flows over the surface of the  
16 ground following no defined course or channel is not appropriable water. *Espil Sheep Co. v. Black*  
17 *Bill & Doney Parks Water Users Ass'n*, 16 Ariz. App. 201, 203, 492 P.2d 450, 452 (1972).

18 The Statements of Claimant also claim priority dates later than the date that ADWR filed  
19 the San Pedro Hydrographic Survey Report in 1991 (“San Pedro HSR”). Therefore, those claimed  
20 uses have not been the subject of an investigation and report by ADWR required by A.R.S. §45-  
21 256, and other claimants have not received adequate notice of the claims. Accordingly, no further  
22 consideration will be given to Statements of Claimant 39-18071 and 39-18072 in this contested  
23 case.

#### 24 25 **2. New Statements of Claimant for Rights to Water from a Well**

26 Charlie E. and Nancy L. Henson and Nancy J. Hunter filed Statement of Claimant 39-18073  
27 to claim a water right to water pumped from a well, Well Registration No. 55-502965. According  
28

1 to the public records of the Arizona Department of Water Resources, the current owner of the well  
2 is Bar Seven Cattle Company and the location of the well is NESESE Section 10 T9S R21E. On  
3 February 7, 2020, ADWR filed a map showing the location of wells in sections 10, 11, 14, and 15  
4 T9S R21E relative to the subflow zone. All of the wells are located outside of the subflow zone.<sup>1</sup>  
5 Claims for appropriable water rights to water pumped from wells located outside of the subflow  
6 zone must be stayed pending development of an approved subflow depletion test.

7 Similarly, Jeff Kerley, Mike and Aida Leusch, Raymond Jones and Jacqueline K. Few-  
8 Jones, and James C. and Hilda Etherton filed Statements of Claimant claiming water rights for  
9 water from wells located within the boundaries of the land included in the WFR. *See Attachment*  
10 *A.* The trustees of the Marcum Family Living Trust filed a Statement of Claimant for a well they  
11 expected to drill in the future. Unlike the claim asserted in Statement of Claimant 39-18073, the  
12 claimed priority dates on each Statement of Claimant occur after the issuance of the San Pedro  
13 HSR. For the reasons stated above with respect to wells located outside the subflow zone and  
14 claims with priority dates after 1991, no further action will be taken at this time to adjudicate these  
15 claims for water rights.

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18 **Remaining Landowners**

19 No action will be taken in this contested case with respect to the landowners shown on  
20 Attachment A who have not filed a Statement of Claimant.

21  
22 **IT IS ORDERED:**

- 23  
24 1. This contested case shall not adjudicate any claims not included in the Statements of  
25 Claimant, as originally filed or as amended, listed in the WFR.

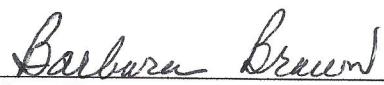
26  
27 <sup>1</sup> At the Status Conference on December 20, 2019, the Court erroneously stated that ADWR  
28 had previously reported that the wells listed in the WFR were within the subflow zone. The  
Arizona Department of Water Resources had not previously reported that the wells were in the  
subflow zone.

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2. The adjudication of any claims for water rights with a priority date prior to 1991 for which a well is the source of the water right is stayed pending the approval of a subflow depletion test.
3. The December 20, 2019 minute entry directing counsel for Charlie E. and Nancy L. Henson and Nancy J. Hunter to file stipulated abstracts or a status report by May 8, 2020 is vacated.
4. Bar Seven Cattle Company LLC shall submit proposed abstracts for *de minimis* water rights that do not list a well as a source of water to ADWR by **May 8, 2020**, for purposes of allowing ADWR to review and provide the Court with comments on the listed water right characteristics.
5. Bar Seven Cattle Company LLC shall file stipulated abstracts for the remaining water rights that do not list a well as a source of water or a status report by **May 8, 2020**.

  
\_\_\_\_\_  
SUSAN WARD HARRIS  
Special Master

On March 26, 2020 the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case.

  
\_\_\_\_\_  
Barbara Brown

# ATTACHMENT A

<b>Land owner</b>	<b>Tax Parcel No.</b>	<b>Current Status</b>
Lou and Nelcita F. Patrie	111-12-060	No SOC filed
Jeff Kerley	111-12-061	Filed SOC 39-16738 and 39-16739 for water from a well and runoff with a claimed priority date of 2007
Mike and Aida L. Leusch	111-12-063	Filed SOC 39-17929 for water from a well with a claimed priority date of 2016
John Tolly	111-12-064	No SOC filed
Edward D. Crabtree	111-12-075	No SOC filed
John E. Surrent	111-12-076	No SOC filed
Raymond Jones and Jacqueline K. Fewes-Jones	111-12-079	Filed SOC 39-17720 for water from a well with a claimed priority date of 2013
Michael L. and Patricia L. Sheaffer as Co-Trustees of the Michael L. and Patricia L. Sheaffer Revocable Living Trust	111-12-099	No SOC filed Removed from Court-approved mailing list
Michael B. and Wendy M. Marcum as Co-Trustees of the Marcum Family Living Trust	111-12-100	Filed SOC 39-18070 for groundwater from a well to be drilled in the future
Peter D. & Elaine M. Braden and Scott & Theresa Gulbranson	111-12-101 and 111-12-102	No SOC filed Removed from Court-approved mailing list
Ramon Burrola	111-12-104 and 111-12-103	No SOC filed
James C. and Hilda Etherton	111-12-108	Filed SOC 39-17812 for water from a well with a priority date of 2013
James F. and Mary Ann Padglick	111-12-109	No SOC filed Removed from Court-approved mailing list
Charles and Karen L. Hoffman	111-12-110	No SOC filed