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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL
ADJUDICATION OF ALL RIGHTS
TO USE WATER IN THE LITTLE
COLORADO RIVER SYSTEM AND
SOURCE

CV6417

Case: **CV6417-33-5042**

**ORDER INITIATING CONTESTED
CASE AND SETTING INITIAL
CONFERENCE**

CONTESTED CASE NAME: *In re Fost W. Flake*
HSR INVOLVED: Silver Creek Hydrographic Survey.
DESCRIPTIVE SUMMARY: The Clerk of Apache County Superior Court is directed to initiate CV 6417-33-5042. Initial conference set for **April 9, 2024, at 9:30 a.m.**
NUMBER OF PAGES: 14

General Explanation

This order opens a case to determine rights to use water on land that the Navajo County Assessor has identified as owned by Gaylan and Donna Flake, Lora Flake, Billy and Karen Rowley, Justin and Molly Stradling, and Joy and Will Whipple. The first step in this case is an initial conference with the Court, scheduled for **April 4, 2024, at 9:30 AM** to determine if

landowners are interested in pursuing potential water rights. Interested Parties **MUST** attend the scheduled initial conference if they plan to pursue potential water rights. Failure to appear at the initial conference could result in the dismissal of the case and the loss of water rights associated with the properties.

In this case, Fost W. Flake filed Statements of Claimant (“SOCs”) 39-81263, 39-81266, 39-81267, 39-81269, and 39-81270 in 1982, to assert claims to use water on land that appears to include Navajo County tax parcels 202-27-005B, 202-27-005A, and 202-05-006.

The first step in this case will be an initial conference, where landowners will state whether they intend to pursue water rights.

Additional background information on the process for determining water rights in Arizona can be found on Attachment A.

Details of the Case

The SOC's filed by Fost W. Flake contain the following claims:

SOC	Quantity determined by ADWR	Water Source	Water Use
39-81263	< 15 acre-feet	Six Mile Draw, Tributary to Silver Creek	Stockpond
39-81266	1.4 acre-feet	Six Mile Draw, Tributary to Silver Creek	Stockpond
39-81267	< 15 acre-feet	Six Mile Draw, Tributary to Silver Creek	Stockpond
39-81269	34.0 acre-feet	Six Mile Draw, Tributary to Silver Creek	Stockpond
39-81270	< 15 acre-feet	Six Mile Draw, Tributary to Silver Creek	Stockpond

The Arizona Department of Water Resources (“ADWR”) investigated the claims made by Fost W. Flake (“Claimant”) and prepared Watershed File Report No. 33-42-019 (“WFR”),

1 published in the Final Silver Creek Watershed Hydrographic Survey Report (1991) (“Silver
2 Creek HSR”). The WFR recorded that water was being used on the property for six stockponds.
3 A copy of the WFR is attached as Attachment B.

4 After ADWR issued the WFR, an objection was filed to the findings made in the WFR
5 by the United States. The San Juan Southern Paiute Tribe, Hopi Tribe, and Navajo Nation joined
6 in this objection.

8 **Claimant and Landowners**

9 The WFR lists Fost W. Flake as the owner of the property described as located in Sections
10 29 and 31 of Township 14 North, Range 21 East and Section 5 of Township 13 North, 21 East
11 in 1991. According to maps obtained from the Navajo County Assessor (“Assessor”) and
12 documents obtained from the Navajo County Recorder, the land investigated appears to comprise
13 Navajo County tax parcels 202-27-005B, 202-27-005A, and 202-05-006.

14 Attachment C contains a description for each parcel of the relevant documents obtained
15 from the Navajo County Recorder. A copy of the map on file with the Assessor showing the
16 relevant tax parcels and current ownership is attached as Attachment D.

17 The public records of the Arizona Department of Water Resources do not contain any
18 assignments of the SOCs listed in the WFR, and the current landowners do not appear to have
19 filed any additional SOCs.

20 Property owners must file Statements of Claimant and present to the Court evidence of
21 the existence of a water right on their property. This evidence may include the WFR. If either
22 the property owner proves to the Court the existence of water rights on their property or enters
23 into a valid settlement approved by the Court, the Court will recognize enforceable water rights
24 in a “Final Decree.” Ariz. Rev. Stat. § 45-257(B).

25 This is an Order from the Court. All parties must comply with the following instructions.
26 The failure to obey this, or any, court order may result in the dismissal of this case and the loss
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1 of any potential water rights associated with the properties mentioned in this Order. If you have
2 questions regarding this order or any of the attachments, please contact the General Stream
3 Adjudication, Office of the Special Water Master, at (602) 372-4115. Please note that staff can
4 only answer administrative questions and cannot provide legal advice.

5 **IT IS ORDERED:**

6 1. Case Initiation. This contested case shall be known as *In re Fost W. Flake*, and
7 it will resolve claims to appropriable water asserted in Statement of Claimant 39-
8 81263, 39-81266, 39-81267, 39-81269, and 39-81270 and objections that were filed
9 to Watershed File Report No. 33-42-019.

10 2. Initial Conference. An initial conference shall be held on **April 9, 2024 at 9:30**
11 **AM** to determine whether current landowners intend to pursue claims for water
12 rights. The conference will be held using the Court Connect program. Instructions
13 for Court Connect are attached as Attachment F. If you receive this order by email,
14 click on the red box “Join Court Connect Hearing” on the attached instructions to
15 make an appearance. If you do not receive this order by email, log into the Court
16 Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If
17 you do not have access to the internet, you may attend telephonically using the
18 telephone number and access code included in the instructions for Court Connect.

19 3. Parties. The litigants in this contested case are the Claimant, the current landowners,
20 and any party who filed an objection to the Watershed File Report. The objectors in
21 this case are the United States, the San Juan Southern Paiute Tribe, the Hopi Tribe,
22 and the Navajo Nation.

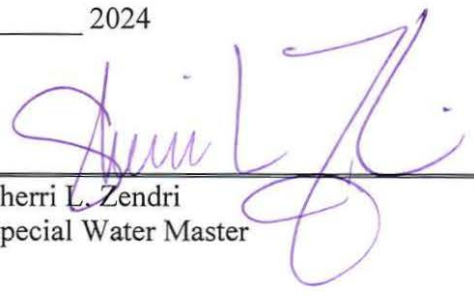
23 4. Objections. Copies of the objection filed to WFR No. 33-42-019 can be found under
24 the case number CV 6417-33-5042 on the following website:
25 [http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)
26 [whatsNew.asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp).

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5. Court-Approved Mailing List.

- A. The initial Court-approved mailing list for this case shall include all persons listed on Attachment E to this order. The list may be modified only by filing a motion with the Special Master to amend the Court-approved mailing list. Litigants are responsible for using the current Court-approved mailing list.
- B. A copy of any pleading filed with the Clerk of the Apache County Superior Court in this case shall be served upon each person listed on the Court-approved mailing list.
- C. Claimants wishing to be added or removed from the mailing list shall file a motion with the Special Master. Parties allowed to intervene will be automatically added to the Court-approved mailing list.
- D. The Clerk of the Court will send copies of all minute entries and orders issued in this case to the parties listed on the Court-approved mailing list.
- E. Claimants who would like to receive courtesy copies of minute entries and orders may request inclusion on an email list by sending a request to emily.natale@jbazmc.maricopa.gov.

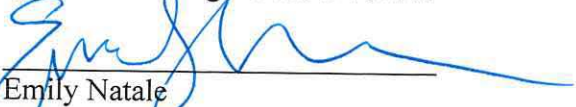
Signed this 5th day of March 2024



Sherri L. Zendri
Special Water Master

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On March 5, 2024, the original of the foregoing was delivered to the Clerk of the Apache County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case, a copy of which is attached, and to all persons listed on the Court-approved mailing list for CV6417.



Emily Natale

ATTACHMENT A

General Background on the Water Rights Determination Process in Arizona

A general stream adjudication is a judicial proceeding to determine the quantity and priority of all water rights in a river system. Arizona is undertaking general stream adjudications of both the Gila River and the Little Colorado River systems. A river system includes surface water flowing “in streams or other natural channels”, groundwater sufficiently connected to that surface water, and water subject to claims by the federal government. Ariz. Rev. Stat. § 45-251(7). Recognizing and respecting water rights and the priority of such rights is important in Arizona where times of drought or water scarcity can occur.

All cases begin with the filing of a “Statement of Claimant,” (“SOC”) in which a property owner makes a claim for a right to use surface water on their property. Ariz. Rev. Stat. § 45-254(A). This person is the “claimant.” The SOCs contain, among other characteristics, a description of the source and quantity of the water used, the location of use, the location from which the water was diverted, and the date when the water was first put to use. *Id.* § 45-254(C).

After the property owner files the SOCs, the Arizona Department of Water Resources (“ADWR”) prepares a “Watershed File Report,” (“WFR”) in which ADWR investigates the claims in the SOCs and recommends water rights associated with the property. *Id.* § 45-256(B). ADWR compiles all WFRs for a watershed into a comprehensive Hydrographic Survey Report (“HSR”) and publishes the report for public review and comment. In response, other claimants in the Adjudication may file “objections” disputing the information or recommendations in the WFR. The individuals who file objections are called “objectors.”

This “contested case”, one of thousands in the Little Colorado River System, will evaluate claims asserted in specific Statements of Claimant while considering objections to the WFR that reported ADWR’s initial inspection of those claims.

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ATTACHMENT B
Watershed File Report

LAND OWNER _____ WATERSHED FILE NO. _____
 FLAKE, FOST W. (TRUSTEE) O33-42-019

A P P L I C A B L E F I L I N G S A N D D E C R E E S

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION	TWNP	RNGE	CLAIM DATE	DIVERSION SECTION	LOCATION TWNP	RNGE
36-0035478		DOMESTIC STOCKWATERING	.20				1886	NWSW29	14ON	21OE
36-0035481		DOMESTIC STOCKWATERING	.10				1886	SWSW31	14ON	21OE
36-0035482		DOMESTIC STOCKWATERING	.30				1886	NENE31	14ON	21OE
36-0035484		DOMESTIC STOCKWATERING	.20				1886	NESW29	14ON	21OE
36-0035485		DOMESTIC STOCKWATERING	.40				1886	SENE29	14ON	21OE
38-0058206		STOCKPOND	.25	NENE31	14ON	21OE	1960	NENE31	14ON	21OE
38-0058223		STOCKPOND	.40	SENE29	14ON	21OE	1937	SENE29	14ON	21OE
38-0058224		REC/FISH/WLDFL STOCKPOND	.20	NESW29	14ON	21OE	1973	NESW29	14ON	21OE
38-0058226		REC/FISH/WLDFL STOCKPOND	.30	NENE31	14ON	21OE	1947	NENE31	14ON	21OE
38-0058227		STOCKPOND	.10	SWSW31	14ON	21OE	1937	SWSW31	14ON	21OE
39-0081263		REC/FISH/WLDFL STOCKPOND	2.00				1886	SWNWSW29	14ON	21OE
39-0081266		STOCKPOND	4.00				1886	SWSWSW31	14ON	21OE
39-0081267		STOCKPOND	1.90					SENE31	14ON	21OE
39-0081269		STOCKPOND	10.00					NWNE29	14ON	21OE
39-0081270		STOCKPOND	1.80					SESENE29	14ON	21OE

D W R A N A L Y S I S O F F I L I N G S A N D D E C R E E S

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
36-0035478	DOMESTIC STOCKPOND	NONE STOCKPOND		SPO03
36-0035481	DOMESTIC STOCKPOND	NONE STOCKPOND		SPO04
36-0035482	DOMESTIC STOCKPOND	DOMESTIC STOCKPOND		SPO05
36-0035484	DOMESTIC STOCKPOND	NONE STOCKPOND		SPO02
36-0035485	DOMESTIC STOCKPOND	NONE STOCKPOND		SPO01
38-0058206	STOCKPOND	NONE STOCKPOND		
38-0058223	STOCKPOND	NONE STOCKPOND		SPO01
38-0058224	REC/FISH/WLDFL STOCKPOND	INCIDENTAL STOCKPOND		SPO02
38-0058226	REC/FISH/WLDFL STOCKPOND	INCIDENTAL STOCKPOND		SPO05
38-0058227	STOCKPOND	STOCKPOND		SPO04
39-0081263	REC/FISH/WLDFL STOCKPOND	INCIDENTAL STOCKPOND		SPO03
39-0081266	STOCKPOND	STOCKPOND		SPO04
39-0081267	STOCKPOND	STOCKPOND		SPO05
39-0081269	STOCKPOND	STOCKPOND		SPO02
39-0081270	STOCKPOND	STOCKPOND		SPO01

R E S E R V O I R S

PWR #	LOCATION SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
SPO01	SWSENE29	14ON	21OE		SURFACE	1983	LOWER VALLEY TANK	STOCKWATERING WILDLIFE
SPO02	NWNE29	14ON	21OE		SURFACE	1983	LAKE MARJORY	STOCKWATERING
SPO03	NESW29	14ON	21OE		SURFACE	1983	GRANDFATHER TANK	STOCKWATERING
SPO04	SWSWSW31	14ON	21OE		SURFACE	1986	NO. 2 TANK	STOCKWATERING WILDLIFE
SPO05	SESENE31	14ON	21OE		SURFACE	1983	VEE TANK	STOCKWATERING

PWR #	LOCATION SECTION TWP RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
SPO06	NWNENE05 13ON 21OE		SURFACE	1953	UNNAMED	STOCKWATERING

P W R S U M M A R Y

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	** APPARENT FIRST USE ** DATE	DATA SOURCE	DRAINAGE AREA/ WATER SOURCE NAME
SPO01	39-0081270	36-0035485 38-0058223	1886	36-35485	SILVER CREEK
SPO02	39-0081269	36-0035484 38-0058224	1886	36-35484	SILVER CREEK
SPO03	39-0081263	36-0035478	1886	36-35478	SILVER CREEK
SPO04	39-0081266	36-0035481 38-0058227	1886	36-35481	SILVER CREEK
SPO05	39-0081267	36-0035482 38-0058226	1886	36-35482	SILVER CREEK
SPO06	NONE	NONE	1953	1953 AERIAL PHOTO	SILVER CREEK
NONE	NONE	38-0058206			

Q U A N T I T I E S O F U S E

PWR #	QUANTIFICATION TYPE	APPLICABLE ACREAGE/SURFACE AREA (ACRES)	WATER DUTY	ESTIMATED VOLUME	REMARKS
SPO01	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	
SPO02	MAX. AREA/CAP	10.0		34.0 AF	
SPO03	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	
SPO04	MAX. AREA/CAP	2.4		1.4 AF	
SPO05	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	
SPO06	MAX. AREA/CAP	< 2.0		< OR = 15.0 AF	

E X P L A N A T I O N

FILINGS AND DECREES

FILINGS 36-35484, 36-35485, 36-35478, 36-35481 & 36-35482 CLAIM DOMESTIC AND STOCKWATERING USES. NO DOMESTIC USES WERE FOUND AT THE CLAIMED LOCATIONS.
FILING 38-58206 CLAIMS STOCKWATERING USE FROM "POND #1". NO STOCKPOND WAS FOUND AT THE CLAIMED LOCATION.

USES AND RESERVOIRS

SP1-SP4 - STOCKPONDS LOCATED ON SIXMILE DRAW. SP4 IS PARTIALLY LOCATED ON ADJACENT PRIVATE LAND.
SP5 - STOCKPOND LOCATED ON AN UNNAMED TRIBUTARY TO SIXMILE DRAW.
SP6 - STOCKPOND LOCATED ON AN UNNAMED TRIBUTARY TO FIVEMILE DRAW.
STOCKPONDS SP1-SP6 ARE ALL LOCATED WITHIN THE SILVER CREEK DRAINAGE AREA.

ATTACHMENT C

Summary of County Recorder Documents

202-27-005B		
Transferor	Transferee	Document No.
Gaylan Flake, Donna Flake, Lora Flake, Billy and Karen Rowley, Justin and Molly Stradling, Joy and Will Whipple	Gaylan Flake and Donna Flake	2010-05347
Marjory Flake	Gaylan Flake, Donna Flake, Lora Flake, Billy and Karen Rowley, Justin and Molly Stradling, Joy and Will Whipple	2001-26410
Estate of Fost Flake	Marjory Flake	2001-26409

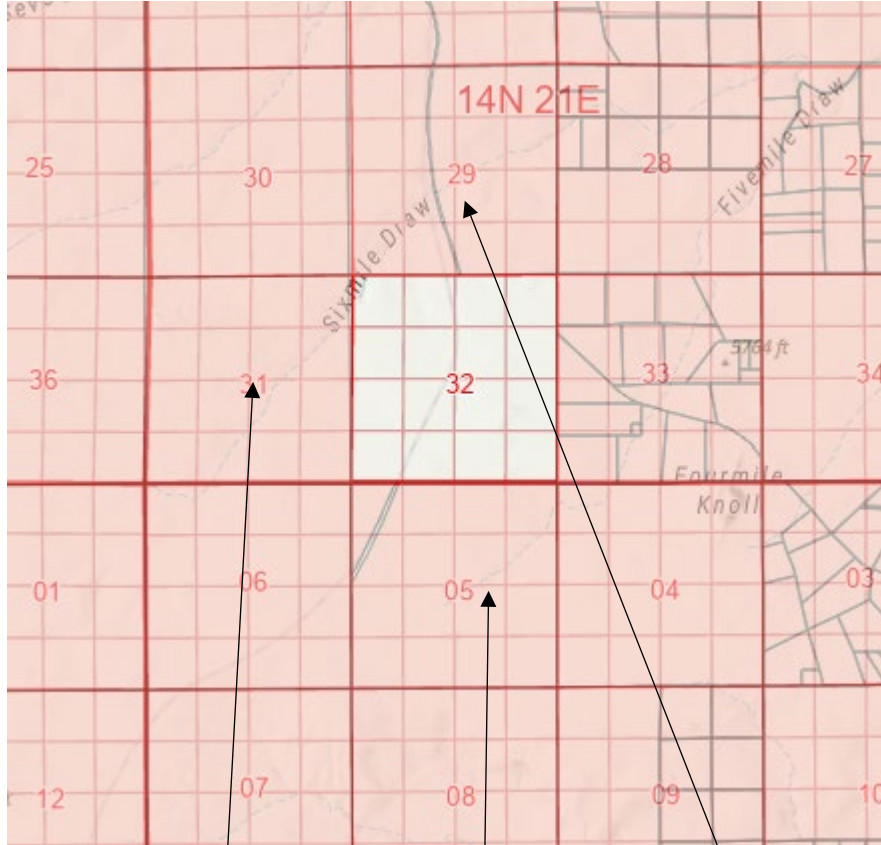
202-27-005A		
Transferor	Transferee	Document No.
Marjory Flake	Gaylan Flake, Donna Flake, Lora Flake, Billy and Karen Rowley, Justin and Molly Stradling, Joy and Will Whipple	2002-00272
Estate of Fost Flake	Marjory Flake	2001-26409

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ATTACHMENT D

Assessor Map

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202-27-005B
Gaylan and Donna Flake

202-27-005A
Gaylan and Donna Flake et al.

202-05-006
Estate of Fost Flake, Trustee

ATTACHMENT E

Initial Court-Approved Mailing List

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Arizona Department of Water Resources
Kimberly R. Parks and Karen J. Nielsen
1110 West Washington, Suite 310
Phoenix, AZ 85007

Arizona State Land Department
Carrie Brennan and Kevin Crestin
Arizona Attorney General
Natural Resources Section
2005 North Central
Phoenix, AZ 85004

Clerk of the Superior Court
Apache County
P. O. Box 365
St Johns, AZ 85936

Special Master Sherri Zendri
Superior Court of Arizona
201 W. Jefferson Street
Courtroom 301
Phoenix, AZ 85003

Mark J. Widerschein
Maggie Woodward
Alexa Penalosa
US Dept of Justice – ENRD
Natural Resources Section
PO Box 7611
Washington, DC 20044

Vanessa Boyd Willard
U. S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202

Hopi Tribe
General Counsel of the Hopi Tribe
P. O. Box 123
Kykotsmovi, AZ 86039

C. Campbell, P. Londen, P. Bowden
OSBORN MALEDON, P.S.
2929 North Central Avenue, Ste 2100
Phoenix, AZ 85012

San Juan Southern Paiute Tribe
J. Kolsrud, I. Fimbres-Ruiz, K. Shaffer
May
Potenza, Baran & Gillespie, PC
1850 N. Central Avenue, Ste 1600
Phoenix, AZ 85004-4633

Navajo Nation
Evan Hiller, Candace French, Jeffrey Leonard,
Judith Dworkin and Kathryn Hoover
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251

Navajo Nation Department of Justice
Ethel Branch & G. Michelle Brown-Yazzie
P.O. Drawer 2010
Window Rock, AZ 86515

Fost W. Flake
PO Box 147
Snowflake, AZ 85937

Gaylan and Donna Flake et al.
435 E Belly Button Ln
Snowflake, AZ 85937-5622

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ATTACHMENT F



Court Connect Hearing Notice for In re Fost W. Flake

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re Fost W. Flake
Contested Case No. CV6417-33-5042
Start Date/Time: April 9, 2024 at 9:30 a.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)