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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

Civil 6417-33-7108

ORDER TO INITIATE CONTESTED CASE  
AND ORDER SETTING STATUS  
CONFERENCE

CONTESTED CASE NAME: *In re Arizona Game & Fish Department-Pinetop Fish Hatchery*  
HSR INVOLVED: Silver Creek Hydrographic Survey  
DESCRIPTIVE SUMMARY: The Clerk of Apache County is directed to initiate Civil 6417-33-7108. Status conference set for **March 2, 2023 at 2:00 p.m.**  
NUMBER OF PAGES: 16  
DATE OF FILING: October 17, 2022

**General Explanation**

This Order continues the process necessary to adjudicate claims made for rights to appropriable water by the Arizona Game & Fish Department. This contested case was consolidated with CV 6417-33-9005 and litigation begun. The litigation appears to have ceased in 1994 without decision. By Order dated October 12, 2022, this case has been separated from and is no longer consolidated with CV 6417-33-9005.

1 This contested case is one of the many cases in the Arizona General Stream Adjudication  
2 for the Silver Creek Watershed to determine legal rights to water. The purpose of the General  
3 Adjudication is to determine the rights of those persons who filed Statements of Claimant for  
4 rights to use appropriable water in Arizona. The General Adjudication will also determine water  
5 rights for the Hopi Reservation, the Navajo Reservation, and other watersheds included in the  
6 Little Colorado River Watershed.

7  
8 Arizona Game & Fish Commission ("Claimant") filed Statements of Claimant ("SOC")  
9 39-88150 and 39-88151 on September 30, 1985, for rights to water from Pinetop Springs,  
10 tributary to Billy Creek, diverted from the N2NE Section 4 T8N R23E. The Arizona Game and  
11 Fish Commission claimed 1,809.95 acre-feet of water per year, with a maximum flow rate of 2.5  
12 cubic-feet per second ("cfs"). The Arizona Department of Water Resources ("ADWR")  
13 investigated the claim, which it characterized as a claim for commercial and industrial uses for  
14 Pinetop Fish Hatchery, and prepared a report known as Watershed File Report No. 033-56-DAB-  
15 001 ("WFR") published in the Final Silver Creek Watershed Hydrographic Survey Report (1991)  
16 ("Silver Creek HSR"). A copy of the WFR is attached as Attachment A. The Silver Creek HSR  
17 also included an extended discussion about the Pinetop Fish Hatchery. A copy that portion of  
18 the Silver Creek HSR is attached as Attachment B. As described by ADWR, the water use is  
19 "mostly non-consumptive, with the exception of minor evaporation and conveyance losses. The  
20 system is designed to return water back to Billy Creek below the hatchery site." Vol. 1 Silver  
21 Creek HSR at 274.

22  
23  
24 Arizona Department of Water Resources proposed an industrial water right to divert 1.8  
25 cfs. It also found two small reservoirs, each having a surface area of less than two acres and an  
26  
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1 estimated volume of less than 15 acre-feet. A copy of the map showing place of use prepared by  
2 ADWR is attached as Attachment C.

3 After ADWR issued the WFR, objections were filed to the findings made in the WFR by  
4 the Phelps Dodge Corp., Arizona Game and Fish Commission, Salt River Project, the United  
5 States, joined by the Hopi Tribe, the Navajo Nation, and the San Juan Southern Paiute Tribe, and  
6 the Committee To Save Billy Creek. The purpose of this case is to consider the claims made for  
7 water rights that are the subject of the WFR and resolve the objections to the WFR.  
8

9  
10 **IT IS ORDERED:**

11 1. Contested Case. This contested case shall be known as *In re Arizona Game &*  
12 *Fish Department-Pinetop Fish Hatchery*, and it will determine appropriable water rights asserted  
13 in the Statements of Claimant and objections that were filed to Watershed File Report No. 033-  
14 56-DAB-001 published in the Final Silver Creek Watershed Hydrographic Survey Report  
15 (1991). Copies of objections can be found under the case name and number on the following  
16 website:  
17 [18 http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.  
19 asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)  
20

21 2. Litigants. The litigants in this contested case are the Claimant and all persons  
22 who filed objections to the WFR, and parties who are allowed to intervene by order.

23 3. Court-Approved Mailing List.

24 A. The initial Court-approved mailing list for this case shall include all  
25 persons listed on Attachment D to this order. The list may be modified  
26 only by filing a motion with the Special Master to amend the Court-  
27  
28



1 approved mailing list. Litigants are responsible for using the current  
2 Court-approved mailing list.

3 B. A copy of any pleading filed with the Clerk of the Apache County  
4 Superior Court in this case shall be served upon each person listed on the  
5 Court-approved mailing list.

6 C. Claimants wishing to be added or removed from the mailing list shall file  
7 a motion with the Special Master. Parties allowed to intervene will be  
8 automatically added to the Court-approved mailing list.

9 D. The Clerk of the Court will send copies of all minute entries and orders  
10 issued in this case to the parties listed on the Court-approved mailing list.

11 E. Claimants who would like to receive courtesy copies of minute entries and  
12 orders may request inclusion on an email list by sending a request to  
13 emily.natale@jbazmc.maricopa.gov.  
14

15  
16 4. Status Conference. An initial status conference shall be held to determine whether  
17 the Arizona Game & Fish Department intends to pursue claims for rights to appropriable water  
18 for commercial and irrigation uses for the Pinetop Fish Hatchery and whether the parties have  
19 settled or believe they can settle the objections to the WFR. The Status Conference shall be held  
20 **on March 2, 2023 at 2:00 p.m.**


21  
22 The Status Conference shall be held using the Court Connect program. Instructions for  
23 Court Connect are attached as Attachment E. If you receive this Order by email, click on the  
24 red box "Join Court Connect Hearing" on the attached instructions to make an appearance. If  
25 you do not receive this Order by email, log into the Court Connect program on the internet by  
26 typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may  
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1 attend telephonically using the telephone number and access code included in the instructions  
2 for Court Connect. Alternatively, you may attend telephonically using the following  
3 instructions:

4 Instructions for telephonic appearance:  
5 Dial: 602-506-9695 (local)  
6 1-855-506-9695 (toll free long distance)  
7 Dial Participant Pass Code 357264#

8   
9 SUSAN WARD HARRIS  
Special Master

10  
11  
12 On October 17, 2022, the original of the foregoing was delivered  
13 to the Clerk of the Apache County Superior Court for filing and  
14 distributing a copy to all persons listed on the Court-approved  
15 mailing list for this contested case, a copy of which is attached  
16 hereto as Attachment D, and to all persons listed on the Court-  
17 approved mailing list for CV 6417.

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Emily Natale

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**ATTACHMENT A**



LAND OWNER \_\_\_\_\_ WATERSHED FILE NO. \_\_\_\_\_  
 ARIZONA GAME & FISH DEPT. 033-56-DAB-001

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION			CLAIM DATE	DIVERSION LOCATION		
				SECTION	TWNP	RNGE		SECTION	TWNP	RNGE
33-0094845	PERMIT	REC/FISH/WLDF	1810.00	SWNEO4	08ON	23OE	1989	SWNEO4	08ON	23OE
				NWNEO4	08ON	23OE		SENWNEO4	08ON	23OE
39-0088150	AMENDED	REC/FISH/WLDF	5.00	NENWO4	08ON	23OE				
39-0088151	AMENDED	REC/FISH/WLDF	65.00	NENWO4	08ON	23OE	1993			
4A-0001118	CERTIF.	REC/FISH/WLDF	1809.49	NENWO4	08ON	23OE	< 1930	NWNEO4	08ON	23OE

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS	
33-0094845	REC/FISH/WLDF	REC/FISH/WLDF	DO1, SO1	ID001	
39-0088150	COMMERCIAL/IND	COMMERCIAL/IND	SO1, DO1	SROO1, SROO2, ID001	
39-0088151	REC/FISH/WLDF	REC/FISH/WLDF			
	COMMERCIAL/IND	COMMERCIAL/IND	WO1	ID001	
4A-0001118	REC/FISH/WLDF	INCIDENTAL			
	COMMERCIAL/IND	COMMERCIAL/IND	SO1, DO1	SROO1, SROO2, ID001	
	REC/FISH/WLDF	REC/FISH/WLDF			

DIVERSIONS

DIV #	LOCATION			DRAINAGE AREA/ WATER SOURCE NAME	DIVERSION NAME	REMARKS
	SECTION	TWNP	RNGE			
DO1	SENWNEO4	08ON	23OE	BILLY CREEK	BILLY CREEK DIV.	SHARED
SO1	SWNEO4	08ON	23OE	BILLY CREEK	PINETOP SPRINGS	SHARED
SO2	NWNEO4	08ON	23OE	BILLY CREEK	UNNAMED	SHARED
WO1	NENWO4	08ON	23OE	GROUNDWATER	PINETOP WELL	UNUSED

USES

PWR #	LOCATION			SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
	SECTION	TWNP	RNGE					
DV001	SENWNEO4	08ON	23OE		SURFACE		NO	PINETOP SPRINGS DIV.
ID001	NENWO4	08ON	23OE	DO1, SO1, WO1	MIXED		NO	

RESERVOIRS

PWR #	LOCATION			SUPPLIED BY DIVERSIONS	WATER SOURCE	PHOTO DATE	RESERVOIR NAME	STORAGE PURPOSE
	SECTION	TWNP	RNGE					
SROO1	NWNEO4	08ON	23OE		SURFACE	1970	UNNAMED	WILDLIFE
SROO2	NWNEO4	08ON	23OE		SURFACE	1970	UNNAMED	WILDLIFE

SHARED USES AND DIVERSIONS

\*\* WATER FROM DO1 FOUND IN FILE (033-56DAB-17) IS USED IN THIS FILE  
 \*\* WATER FROM SO1 FOUND IN FILE (033-56DAB-17) IS USED IN THIS FILE  
 \*\* WATER FROM SO2 IS SHARED WITH THESE ADDITIONAL FILES:  
 033-56-ADC-1

PWR SUMMARY

PWR #	APPLICABLE		** APPARENT FIRST USE **		DRAINAGE AREA/ WATER SOURCE NAME
	ADJ FILINGS	PRE FILINGS	DATE	DATA SOURCE	
DV001	NONE	NONE	1930	4A-1118	BILLY CREEK
ID001	39-0088150	33-0094845	1930	4A-1118	BILLY CREEK
	39-0088151	4A-0001118			GROUNDWATER

PWR #	APPLICABLE	APPLICABLE	** APPARENT FIRST USE **		DRAINAGE AREA/ WATER SOURCE NAME
	ADJ FILINGS	PRE FILINGS	DATE	DATA SOURCE	
SROO1	39-0088150	4A-0001118	1930	4A-1118	BILLY CREEK
SROO2	39-0088150	4A-0001118	1930	4A-1118	BILLY CREEK

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE		APPLICABLE	WATER DUTY	ESTIMATED VOLUME	REMARKS
			ACREAGE/SURFACE AREA (ACRES)			
IDOO1						
SROO1	MAX.	AREA/CAP	< 2.0		< DR = 15.0 AF	SEE EXPLANATION
SROO2	MAX.	AREA/CAP	< 2.0		< DR = 15.0 AF	

DIVERSION PWR NOS.	DIVERSION CAPACITY	DECREED RATE	MAXIMUM DEMAND RATE
DVOO1	1.8 CFS		

EXPLANATION

DIVERSIONS

- D1 - BILLY CREEK DIVERSION DAM.
- S1 - PINETOP SPRINGS DIVERSION. THIS DIVERSION CONSISTS OF FOUR SPRING BOXES THAT COLLECT WATER FROM THE SPRING AND CONVEY IT TO THE BILLY CREEK DIVERSION DAM. WATER IS DIVERTED AT THIS SITE BY PIPELINE TO THE HATCHERY.
- W1 - DISCONNECTED WELL PREVIOUSLY USED AS BACKUP SUPPLY TO PINETOP SPRING.
- S2 - UNNAMED SPRING DIVERSION USED FOR IRRIGATION ON ADJACENT PRIVATE LAND (REFERENCE W.F.R. #033-56-ADC-1).

USES AND RESERVOIRS

- ID1 - COMMERCIAL/INDUSTRIAL WATER USE: PINETOP FISH HATCHERY. THIS USE INCLUDES THE HATCHERY BUILDINGS AND TWO SMALL OFF-CHANNEL PONDS USED FOR FISH REARING.
- SR1 & SR2 - SMALL RESERVOIRS LOCATED ON BILLY CREEK. THESE CONCRETE IMPOUNDMENTS ARE NOT PRESENTLY A PART OF THE FISH HATCHERY SYSTEM.
- DV1 - PINETOP SPRINGS/ BILLY CREEK DIVERSION.

QUANTITIES OF USE

ID1 - WATER USE AT THE HATCHERY SITE IS MOSTLY NON-CONSUMPTIVE. DIVERTED FLOW IS RETURNED TO BILLY CREEK AT THE END OF THE HATCHERY WATER DISTRIBUTION SYSTEM. CONSUMPTIVE WATER USE AT THE HATCHERY FACILITY IS PRIMARILY IN THE FORM OF EVAPORATIVE LOSS FROM THE HOLDING PONDS AND/OR LEAKAGE AND SEEPAGE FROM PORTIONS OF THE DISTRIBUTION SYSTEM. ALL WATER SOURCES AND USES ASSOCIATED WITH THIS FILE ARE LOCATED WITHIN THE BILLY CREEK DRAINAGE AREA. FOR MORE INFORMATION ON THE PINETOP FISH HATCHERY, SEE UNUSUAL CIRCUMSTANCES REPORTS IN VOLUME 1.



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**ATTACHMENT B**

## PINETOP FISH HATCHERY (WFR #033-56-DAB-1)

The Arizona Game and Fish Department's Pinetop Fish Hatchery operation (Figure 6-2) is shown in detail on Figure 6-3 and on subregion map 56-DAB of Volume 6.

### History

An agreement with the Pinetop-Woodland Irrigation District in 1931 allowed the Arizona Game and Fish Department to divert water from Pinetop Springs to a proposed fish hatchery located in Pinetop. In 1933, fish production began with the diversion of water from the springs to the newly constructed hatchery.

A severe drought in the early 1950s caused the springs to virtually cease flowing. A well was drilled in 1952 next to the main hatchery building to supplement flow from the springs. In the 1960s, due to unreliable water

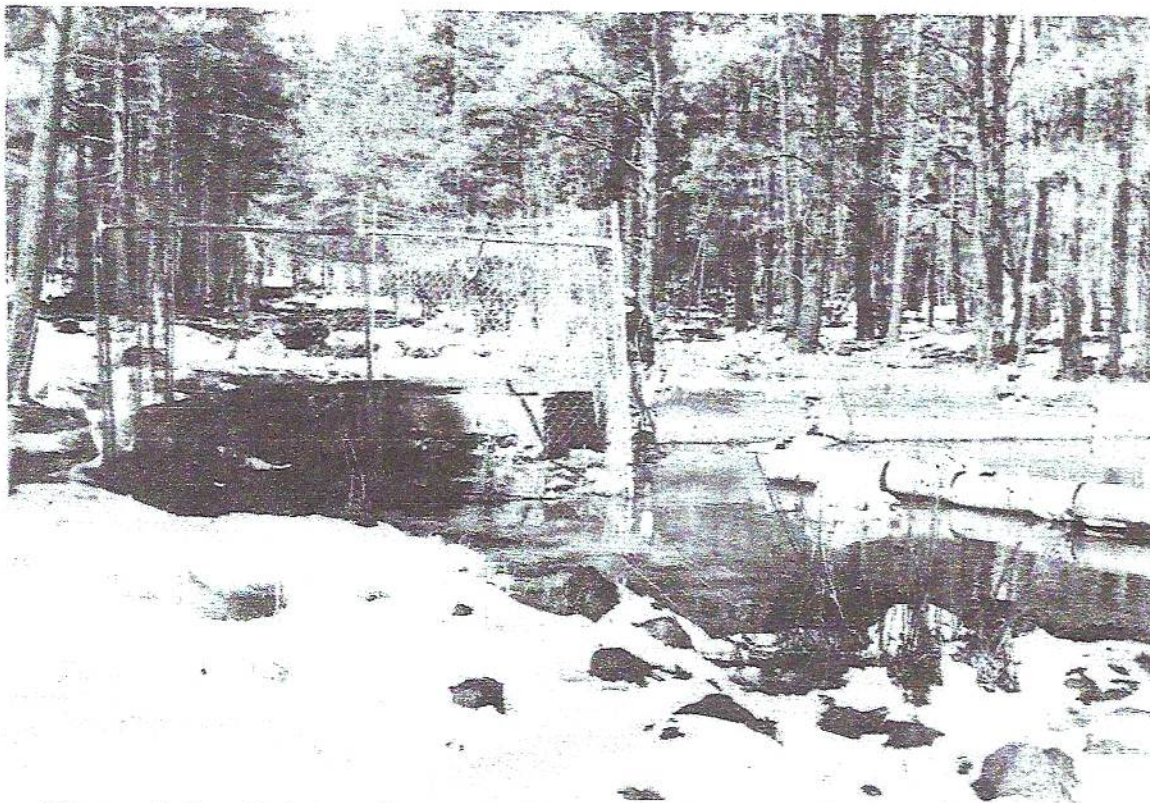
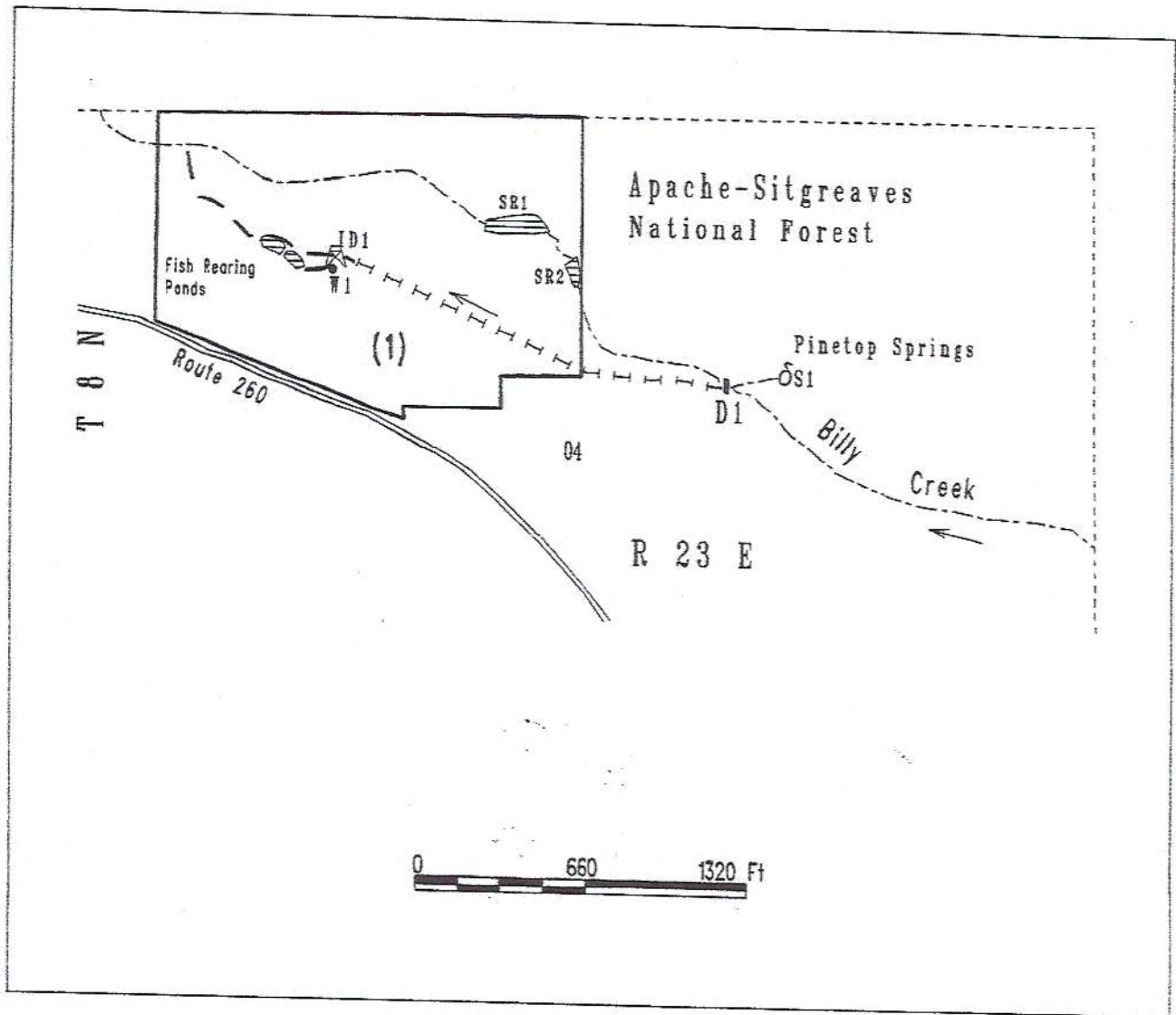


Figure 6-2. Arizona Game and Fish Department - Pinetop Fish Hatchery. A Concrete diversion dam and pipeline intake structure on Billy Creek. This structure collects flows from Pinetop Springs and Billy Creek for use at the hatchery building and rearing ponds.



- |    |                    |  |                           |
|----|--------------------|--|---------------------------|
|    | Ownership Boundary |  | Commercial/Industrial Use |
|    | Roads or Highways  |  | Well                      |
|    | Section Boundary   |  | Spring                    |
|    | Ditch              |  | Reservoir or Pond         |
|    | Pipeline           |  | Diversion                 |
|    | Creek              |  |                           |
| 04 | Section Number     |  |                           |

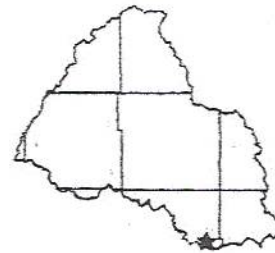


Figure 6-3. Map of the Pinetop Fish Hatchery



conditions, the collection and delivery system from Pinetop Springs fell into disrepair, the well was disconnected, and fish production was discontinued. During the eight years prior to the initial investigation period, the springs began flowing in sufficient quantities to reestablish some fish production uses. During this time (1979-1987), the hatchery has been used periodically for fish holding purposes. The springs have been dry, or flowing at a low rate (approximately 0.2 cfs) through much of 1989 and 1990.

The Arizona Game and Fish Department plans to renovate the hatchery system in the near future. This includes reconstructing the water collection and delivery systems, replacing the well, and rebuilding rearing ponds and raceways.

### Water Supply System

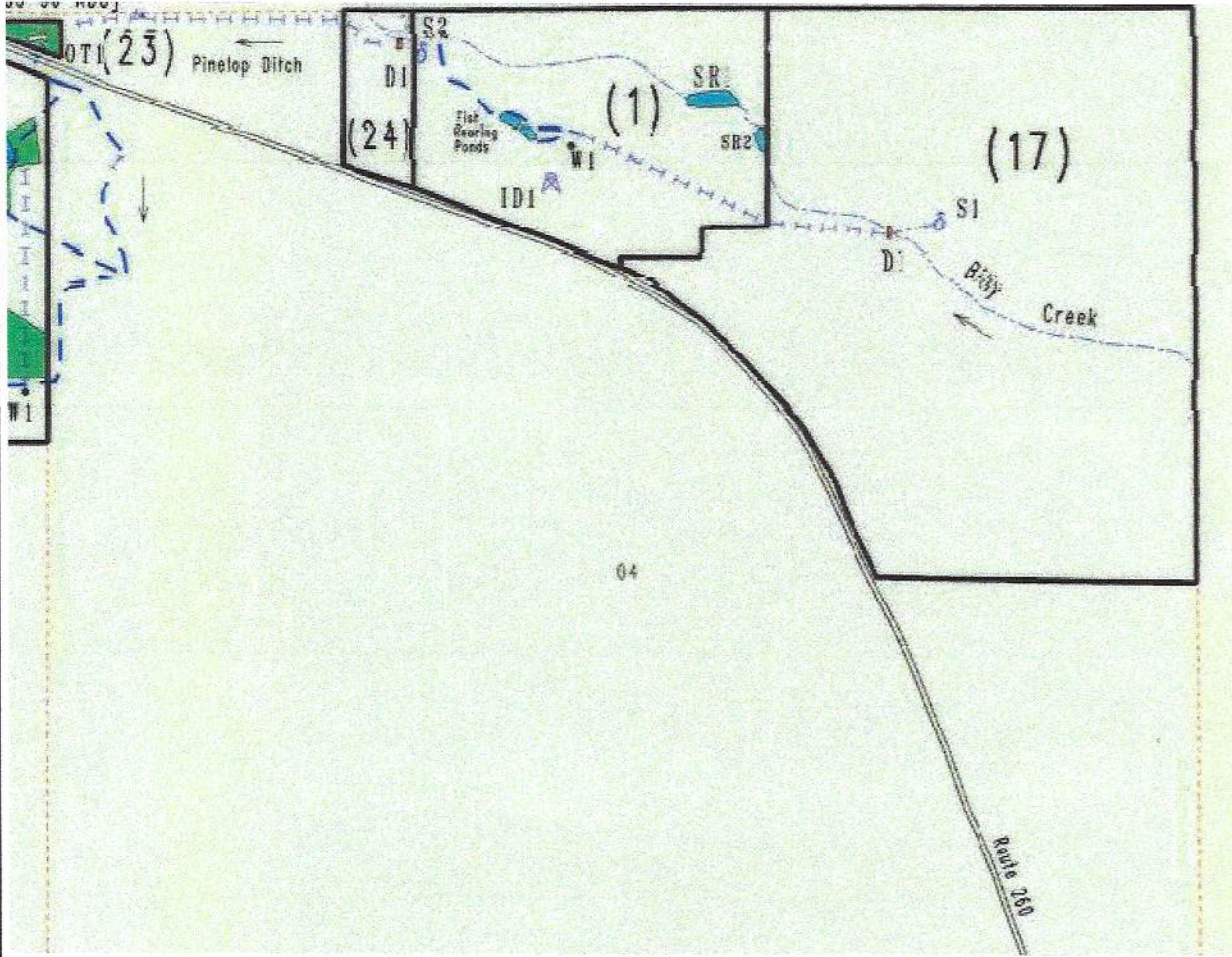
Water use at the hatchery is mostly non-consumptive, with the exception of minor evaporation and conveyance losses. The system is designed to return water back to Billy Creek below the hatchery site.

The hatchery water supply system consists of four spring boxes that convey water by pipeline to a diversion dam on Billy Creek. The pipeline is in poor condition, and currently transports less than the designed capacity of the system. The maximum diverted flow recorded by DWR personnel was 0.54 cfs. The maximum theoretical diversion rate for the existing system is reported at 1.75 cfs (based on analysis done for the Arizona Game and Fish Department, by Wilson & Co., Phoenix, 1988). Most of the water diverted by the dam flows freely from the springs to the pipeline intake at the dam. The diversion dam also collects water from Billy Creek. Water is conveyed 1,500 feet by pipeline from the dam to a headbox located adjacent to the hatchery building. Water released from the headbox flows in raceways to two rearing ponds or can be discharged into Billy Creek. Water diverted into the rearing ponds is eventually released back to Billy Creek. The headbox also supplies water to two fingerling troughs located inside the hatchery building. A well, used to supplement surface water flow, is currently disconnected from the system.

Figure 6-3 shows the facilities associated with the Pinetop Fish Hatchery.

# ATTACHMENT C

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# ATTACHMENT D

1  
2  
3 Arizona Department of Water Resources  
4 Kimberly R. Parks and Kome Akpolo  
5 1110 West Washington, Suite 310  
6 Phoenix, AZ 85007

7 Arizona Game and Fish Department  
8 Habitat Branch-Land & Water Program  
9 5000 West Carefree Highway  
10 Phoenix, AZ 85086

11 Arizona State Land Department  
12 Carrie Brennan and Kevin Crestin  
13 Arizona Attorney General  
14 Natural Resources Section  
15 2005 North Central  
16 Phoenix, AZ 85004

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

21 Hopi Tribe  
22 General Counsel of the Hopi Tribe  
23 P. O. Box 123  
24 Kykotsmovi, AZ 86039

25 C. Campbell, P. Londen, P. Bowden  
26 OSBORN MALEDON, P.S.  
27 2929 North Central Avenue,  
28 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

Rodgerick T. Begay  
Stanley M. Pollack and Doreen N. McPaul  
Navajo Nation Depart. of Justice  
P.O. Box 2010  
Window Rock, AZ 86515-2010

Salt River Project  
J. B. Weldon, M. A. McGinnis, M. K. Foy  
Salmon, Lewis & Weldon  
2850 E. Camelback Rd. Suite 200  
Phoenix, AZ 85016

Special Master Susan Ward Harris  
Superior Court of Arizona  
201 W. Jefferson Street  
Courtroom 301  
Phoenix, AZ 85003

U. S. Department of Justice  
Andrew Guarino  
Vanessa Boyd Willard  
999 18<sup>th</sup> Street, Suite 370  
Denver, CO 80202

United States of America  
P. O. Box 607  
Albuquerque, New Mexico 87103

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



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**ATTACHMENT E**



## Court Connect Hearing Notice for In re Arizona Game & Fish Department- Pinetop Fish Hatchery

*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 Arizona Game & Fish Department – Pinetop Fish Hatchery

**Contested Case No.** CV6417-33-7108

**Start Date/Time:** March 2, 2023 at 2:00 p.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](#)

