

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

03/01/2017

CLERK OF THE COURT

SPECIAL MASTER  
SUSAN WARD HARRIS

T. DeRaddo  
Deputy

W-1, W-2, W-3, W-4 (Consolidated)

FILED: March 9, 2017

In re the General Adjudication  
(Consolidated)  
All Rights to Use Water in  
The Gila River System and Source

In re Sands Group of Cases  
Contested Case No. W1-11-19

MINUTE ENTRY

Central Court Building – Courtroom 301

10:02 p.m. This is the time set for a Status Conference before Special Master Susan Ward Harris, to discuss the status of the Sands Group of Cases, as requested by counsel, David A. Brown.

Court reporter, Marla Arnold is present. A record of the proceedings is also made digitally.

The following attorneys appear in person:

- David A. Brown on behalf of Bayless and Berkalew and the Arizona Cattle Growers' Association
- Theresa Craig on behalf of the Arizona State Land Department;
- John Weldon and Jeff Heilman on behalf of SRP;
- Michael Pearce on behalf of Mercer;
- Stanley Lutz on behalf of Goff & Goff and Joseph Goff;
- Janet L. Miller on behalf of the Arizona Department of Water Resources; and
- Also appearing in the courtroom is Basilio Aja on behalf of the Arizona Cattle Growers' Association

The following attorneys appear telephonically:

- H. T. Hendrickson, Jr. on his own behalf;

- David L. Negri on behalf of the United States;
- Robyn L. Interpreter on behalf of the Yavapai-Apache Nation;
- J. Albert Brown on behalf of Bayless and Berkalew and the Arizona Cattle Growers' Association
- John L. Gaudio with the U.S. Department of the Interior, Office of the Solicitor; and
- Michael LeBlanc on behalf of Pima County.

David A. Brown addresses the Court regarding several issues.

LET THE RECORD REFLECT that Mr. Brown avows that Statements of Claim have recently been filed on behalf of Mr. Smallhouse (of Bayless and Berkalew) on several properties.

Several issues are addressed regarding the 75 abstracts on which Mr. Brown is currently working.

Discussion is held regarding the following: potential ownership issues, lessee information, protocols regarding decision making processes, names of the facilities, the direction in which water runs, points of diversion, points of use, improvements and rights for reimbursement.

Mr. Brown discusses claims and issues regarding several properties as follows: North Dam, Sheep Camp Wash, Kelly Wash, Aquja Wash, Redfield Canyon, Redfield Canyon Spring, Stone Cabin Spring and San Pedro River. Mr. Brown avows that legal descriptions on most of the properties contain errors.

Discussion is held regarding several properties that are considered to be "in lieu sections" of State land. Mr. Brown addresses problematic issues regarding variances in Appendix A and the WFR and in Appendix B and the WFR.

Mr. Brown makes an oral request to extend the date to file the 75 abstracts at issue to March 27, 2017.

There being no objections to Mr. Brown's motion,

**IT IS ORDERED** granting Mr. Brown's oral request. The final 75 abstracts shall be filed by **March 27, 2017**.

Mr. Brown notes that in his Motion to Set the Status Conference, he asked for leave to not file objections to Appendix B and the reports, and requests a ruling from the Court.

**IT IS ORDERED** granting Mr. Brown's request. The Court finds that by filing the afore-mentioned 75 abstracts, he is in compliance with the Order concerning objections to Appendix B.

Mr. Brown makes an oral motion to vacate the current date for the other (3) ranchers in this matter to file their abstract information that is due today.

The Court had vacated the date for the other (3) ranchers to file their abstract information in its Order dated February 16, 2017. The Court shall set a new deadline for the abstracts to be submitted by the ranchers in lieu of today once a final procedure has been adopted to identify the location of water diversion and uses.

Mr. Brown makes an oral request to approve the form of the abstract that Mr. Brown has submitted.

**IT IS ORDERED** granting Mr. Brown's oral request: the form of the abstract is approved by the Court.

Mr. Brown makes an oral request to hold seven (7) related cases in abeyance until the Bayless and Berkalew settlement is concluded.

For the reasons stated on the record,

**IT IS ORDERED** granting Bayless and Berkalew's request, and holding in abeyance the 7 related cases until the proposed Bayless and Berkalew settlement is concluded.

Mr. Brown invites the Court to make a site visit to the Bayless and Berkalew Ranch.

Discussion is held regarding compliance with Pretrial Order No. 4 concerning a few ranchers. Mr. Brown asserts that this Order was not served on anyone and claimants were not aware of their obligations.

The Court asserts that the property owners have the obligation under the Order to file the proper papers with ADWR concerning transfers of property on which water rights have been claimed and relieve ADWR of the burden of having to continually examine records maintained by County Recorders and County Assessors to determine current property ownership.

Mr. Brown re-urges his Motion to Stay the Case due to the financial burden of this matter.

The Court takes the request under advisement.

Theresa Craig addresses the Court regarding Appendix B and some of the State claims, and rights to reimbursement. Ms. Craig concurs regarding the amount of time spent and the financial burden to work on this matter.



Bayless and Berkalew and the State have reached a Stipulation that the ownership is in the name of the State of Arizona in certain cases to protect the right to reimbursement.

John Weldon addresses the Court regarding a possible settlement and objections, and requests that any agreement be widely distributed so all parties on the mailing list receive copies of all mailings/filings and have an opportunity to object.

Michael Pearce addresses the Court regarding the laborious process and the extreme cost of writing the abstracts, and states that having evidentiary proceedings on each issue would not be feasible.

The Court states that the procedure governing summary adjudication does not contemplate evidentiary hearings on each of the abstracts. Objectors may file "corrections" regarding errors and or discrepancies in legal descriptions. After the abstracts are incorporated into a final catalog, only limited objections can be made by objectors who can satisfy a two part test.

Stanley Lutz addresses the Court regarding the preparation of the abstracts. Mr. Lutz suggests that the parties implement the use of GPS tracking in the use of the abstracts.

David Negri addresses the Court and requests that the deadline for the United States to file their objections to Appendix B reports be extended to after October 5, 2017.

H.T. Hendrickson addresses the Court regarding the use of GPS tools stating that he was able to collect GPS coordinates for his water uses within two days. The Court granted Mr. Hendrickson's request to report the place of use with GPS coordinates.

Robyn Interpreter addresses the Court regarding the participation of the Yavapai-Apache Nation in this matter and willingness to consider settlement.

Discussion is held regarding the use of the SOCs as the basis for the completion of the abstracts.

11:46 a.m. Matter concludes.

LATER

Claimants are entitled to have their claims for water rights determined to provide certainty, and in the case of claims involving the State Land Department, where appropriate, confirm their right to reimbursement for improvements. Mr. Brown moved to stay this case until all major cases for water claims have been resolved arguing that the resolution of those cases will eliminate further objections to the *de minimis* claims. At the conference, counsel for SRP and the Yavapai-Apache Nation both indicated a



willingness to consider a settlement of their objections. Thus, at this point at least, it does not appear that objections are impeding this process.

Instead, the problem appears to center on the proper identification of the physical locations to be listed in the water right attributes. There are statements of claimant filed in this case that claim priority dates based on the beneficial use of water for more than a century. Based on the reports and statements of counsel including Mr. Brown, counsel are focused on preparing topographical maps and reconciling the legal descriptions of the place of use as reported by ADWR in its watershed reports, the legal descriptions listed in the statements of claimant, the legal descriptions in the parties' Abstract and Matrices filed November 19, 1993, and the places of use. A stay of the proceedings for an unspecified number of years will not aid the determination of the place of use or diversion or ownership of water rights as between a lessee and the State of Arizona.

Mr. Brown also contends that a stay should be granted due to the financial costs of the process. It cannot be denied that a claimant, such as Mr. Brown's client who is involved in more than 100 claims will incur cost in this process, but not all claimants in this case should be facing the same costs. The number of claims per consolidated case range from the number of Mr. Brown's client's claims, at the high to a low of eight claims. A decision to not address these matters until years in the future will, in all probability, ultimately create more work for the claimants, the Arizona State Land Department and ADWR and generate greater costs for all concerned. People who have worked on the case for years may no longer be available so a new group of people will have to learn and understand the facts and issues, including identifying the historic water uses which are the basis of the claimed water rights. The parties have already reported encountering difficulties because the people who prepared the statements of claimant are no longer available. Sands Claimants Status Report, dated February 1, 2017, p. 2. In addition, during the 25 years since the issuance of the watershed file reports, ownership of the property in a number of the cases has changed and appropriate action has not been taken with respect to the claims for water use. For example, claimants in this case include corporations whose corporate status has been revoked and deceased individuals. Ownership issues can reasonably be expected to proliferate as the years pass that could result in complicated situations that result in higher costs to resolve. A stay of the proceedings is not warranted under the circumstances.

Given that the summary procedures approved for this case and other *de minimis* claims is driven by the desire to adjudicate these claims as quickly and inexpensively as possible, an efficient method must be devised to resolve the issues concerning legal descriptions raised by counsel for claimants. Before fashioning a new order additional information is required. Specifically, the following steps will be undertaken:

- 1) The set of abstracts for Bayless and Berkalew will be analyzed to ascertain the nature of the problems;
- 2) Mr. Brown will file a copy of his proposed protocols regarding the preparation of the abstracts.

- 3) Mr. Hendrickson will be requested to add to the attached schedule, which has been updated to reflect the Assignments filed by Mr. Hendrickson, at least five GPS coordinates for sites for which he claims water uses; and
- 4) Comments will be obtained from ADWR on the use of GPS coordinates to determine the location of water rights and its ability to translate those coordinates into legal descriptions.

Accordingly,

**IT IS ORDERED** denying a stay of the case until an unspecified future date.

**IT IS FURTHER ORDERED** that no party shall be required to file an objection to Appendix B to the Order dated June 16, 2016, as amended by Notice dated August 5, 2016, until further proceedings occur to address the problems raised in the parties' reports and at the status conference.

**IT IS FURTHER ORDERED** that Mr. Hendrickson will insert GPS coordinates for at least five water claims on the attached schedule and file the information by April 21, 2017; and,

**IT IS FURTHER ORDERED** that by May 5, 2017, ADWR will file its comments on the use of GPS coordinates to determine the location of water rights, its ability to translate the GPS coordinates into legal descriptions at the level of  $\frac{1}{4}$ ,  $\frac{1}{4}$ ,  $\frac{1}{4}$  section specificity and the results of its comparison of the locations which Mr. Hendrickson chooses to identify by GPS coordinates and the description in the applicable watershed file report.

**IT IS FURTHER ORDERED** that by May 12, 2017, Mr. Brown shall file his proposed protocols for preparation of the abstracts.

**IT IS FURTHER ORDERED** setting a status conference for May 24, 2017, at 1:30 p.m. in the Superior Court of Arizona, Central Court Building, Courtroom 301, 201 West Jefferson Street, Phoenix, AZ 85003-2202. The status conference will be held to develop a methodology to economically identify the physical locations of water uses and diversions using information obtained from an analysis of Mr. Brown's abstracts, Mr. Hendrickson's GPS coordinates, and ADWR's comments. At the status conference, the determination of whether the effective stay of the adjudication of the claims for water rights concerning claimants other than Bayless and Berkalew until a settlement is reached in connection with Bayless and Berkalew's claims will be reconsidered.

If you wish to appear telephonically, please follow these instructions:

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Participant Pass Code 357264#

A copy of this order is mailed to all persons listed on the Court Approved Mailing List for W1-11-19.



Proposed Water Right Number	Statement of Claimant	Claimant	Legal Description from WFR	GPS Description	Landowner	Lessee
113-09-003-SP001	39-0001588	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	NENESE 13 T9S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SP001	39-0011223	Arizona State Land Department	NENESE 13 T9S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SP002	39-0001587	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	NENENW 15 T9S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SP002	39-0011224	Arizona State Land Department	NENENW 15 T9S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW001	39-0001591	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	SWNWSE 36 T8S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW002	39-0001593	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	SWSWSW 36 T8S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW003	39-0001590	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	NENWNW 18 T9S R19E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW004	39-0011223	Arizona State Land Department	NWNENW 18 T9S R19E		State of Arizona	The Hendrickson Family Trust

113-09-003-SW005	39-0011224	Arizona State Land Department	NENWSW 11 T9S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW006	39-0013221	Arizona State Land Department	NENWNW 18 T9S R19E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW007	39-0007084	Arizona State Land Department	NWNESW 36 T8S R18E		State of Arizona	The Hendrickson Family Trust
113-09-003-SW008	39-0007085	Arizona State Land Department	NENWSE 36 T8S R18E		State of Arizona	The Hendrickson Family Trust
113-09-004-SW001	39-0001592	Harry T. Hendrickson	NWSESW 31 T8S R19E		United States	Harry T. Hendrickson
113-09-004-SW002	39-0008181	United States Forest Service	SWNENW 31 T8S R19E		United States	Hendrickson Family Trust
113-09-004-SW003	39-0001589	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	SENENW 31 T8S R19E		United States	Harry T. Hendrickson
113-09-004-SW003	39-0013907	Arizona State Land Department	SENENW 31 T8S R19E		United States	Harry T. Hendrickson
113-09-005-SP001	39-0008429	United States Forest Service	NESENW 33 T9S R19E		United States	Hendrickson Family Trust
113-09-005-SP002	39-0008446	United States Forest Service	SENWSW 4 T10S R19E		United States	Hendrickson Family Trust
113-09-005-SP003	39-0008445	United States Forest Service	SENESE 4 T10S R19E		United States	Hendrickson Family Trust
113-09-011-SP001	39-0003912	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	SWNE 36 T9S R18E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP001	39-0007086	Arizona State Land Department	SWNE 36 T9S R18E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife

113-09-011-SP002	39-0003911	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NESE 29 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP002	39-0007087	Arizona State Land Department	NESE 29 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP003	39-0003914	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NWSE 30 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP003	39-0007088	Arizona State Land Department	NWSE 30 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP003	39-0013223	Arizona State Land Department	NWSE 30 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP004	39-0003914	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NWSE 30 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP005	39-0003909	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NW/NESW 32 T9S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife



113-09-011-SP005	39-0007089	Arizona State Land Department	NWNESW 32 T9S R19E		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP006	39-0003908	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	SESWSW 2 T10S R18E		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP006	39-0007091	Arizona State Land Department	SESWSW 2 T10S R18E		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP007	39-0003913	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NENE 5 T10S R19E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP007	39-0007092	Arizona State Land Department	NENE 5 T10S R19E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP008	39-0013908	Arizona State Land Department	SWNE 36 T9S R18E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SP009	39-0013909	Arizona State Land Department	NWNE 35 T9S R18E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW001	39-0007086	Arizona State Land Department	SWNE 36 T9S R18E (1)		State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife

113-09-011-SW002	39-0007087	Arizona State Land Department	NESE 29 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW003	39-0007088	Arizona State Land Department	NWSE 30 T9S R19E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW003	39-0013223	Arizona State Land Department	SENE 30 T9S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW004	39-0007089	Arizona State Land Department	NENE 32 T9S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW004	39-0007091	Arizona State Land Department	NENE 32 T9S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW005	39-0007092	Arizona State Land Department	NENE 5 T10S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW006	39-0013222	Arizona State Land Department	SESE 19 T9S R19E	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-011-SW007	39-0013908	Arizona State Land Department	SWNE 36 T9S R18E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife

113-09-011-SW008	39-0013909	Arizona State Land Department	NWNE 35 T9S R18E (1)	State of Arizona	H. T. Hendrickson, Jr. and Marie Del Rayo Hendrickson, husband and wife
113-09-021-SP001	39-0003910	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NENESE 3 T10S R18E	Hendrickson Revocable Trust	
113-09-021-SP002	39-0003907	Harry Thomas Hendrickson and Maria Hendrickson as Trustees of the Hendrickson Family Trust, dated March 27, 2007	NENENE 3 T10S R18E	Hendrickson Revocable Trust	
113-09-BA-001-DM001	39-0001589	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	SWSW 1 T9S R18E (1)	Hendrickson Family Trust	
113-09-BA-001-SW001	39-0001594	Harry T. Hendrickson and Edna M. Hendrickson as Trustees of the Hendrickson Family Trust, dated April 1, 1993	NWSE 1 T9S R18E (1)	Hendrickson Family Trust	

(1) Legal description from Abstracts and Matrices filed November 19, 1993