

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/03/2021

SPECIAL WATER MASTER SUSAN WARD HARRIS

In re: The General Adjudication of All Rights To Use Water in the Gila River System and Source
Contested Case No. W1-11-1343
Contested Case Name In Re: Edward and Ethelyn Lehner

In Re: Status Conference

CLERK OF THE COURT

L. Brown

Deputy

FILED: 12/15/2021

MINUTE ENTRY

Central Court Building- Courtroom 301

1:30 p.m. This is the time set for a Status Conference In Re: Edward and Ethelyn Lehner before
Special Master Susan Ward Harris.

The following attorneys and parties appear via Court Connect/ Microsoft Teams and via telephone:

- Mike Foy on behalf of Salt River Project (“SRP”)
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Richard Palmer Jr. on behalf of the Tonto Apache Tribe
- Joseph Sparks and Laurel Herrmann on behalf of San Carlos Apache Tribe
- Carla Consoli on behalf of the Fry Family Trust
- Charles Cahoy on behalf of the City of Phoenix
- Bradley Pew on behalf of ASARCO, LLC
- Kevin Crestin on behalf of Arizona State Land Department
- Sue Montgomery on behalf of the Yavapai Apache Nation (observing on behalf of the Pascua Yaqui Tribe)
- Thomas Murphy on behalf of Gila River Indian Community
- John Burnside on behalf of BHP Copper

A record of the proceedings is made digitally in lieu of a court reporter.

A copy of the order initiating this case was mailed to the last known address for Edward and Ethelynn Lehner. The order has been returned as not deliverable and no forwarding address was provided.

IT IS ORDERED that Edward and Ethelynn Lehner shall be removed from the Court approved mailing list.

Mrs. Consoli addresses the Court. Her client owns about 8 and a half acres. There are two homes on the land with two wells. The Fry Family Trust is no longer irrigating in the traditional sense but has family gardens. They plan to pursue the two statements of claimant for domestic uses on that property. There is not much information about the first use, it is about 1900 but will be pursuing information to confirm that date.

The Court asks Mrs. Consoli if the wells are in the subflow zone.

Mrs. Consoli states the well in the southern part of the property is in the subflow zone and the well in the northern part of the property is not. Mrs. Consoli provides the Court the well numbers: the southern well number is 55-608083, and the northern well number is 55-608077. Mrs. Consoli will be making a request from the National Archives.

Mrs. Consoli states she believes that the request being made for domestic use will qualify under the *de minimis* rule.

Mrs. Consoli wants to confirm that this contested case was consolidated with contested case W1-11-232. She wanted to confirm that the Fry Family Trust claims would not be adjudicated in W1-11-232. The property that is now owned by the BLM was donated to the United States by the Fry predecessors because that is where the historic Mammoth Hill site is located.

The Court states this case was a part of the SPRNCA case but is now unconsolidated. There is no one here speaking on behalf of Phelps Dodge. We are proceeding forward at this point simply with the domestic uses.

The Court asks Mr. Pew and Mr. Burnside if they are appearing on behalf of Phelps Dodge.

Both parties deny appearances on behalf of Phelps Dodge. Freeport Minerals is a successor of Phelps Dodge, and Freeport Minerals was noticed but has not made an appearance today.

The Court states we will go forward with the domestic uses and won't dismiss the irrigation uses at this point.

IT IS ORDERED that Mrs. Consoli will give notice once the requested documents are received.

1:41 p.m. Matter concludes.

A copy of this order is mailed to all parties on the Court-approved mailing list for this contested case.

NOTE: All court proceedings are recorded digitally and not by a court reporter. The parties or counsel may request a CD of the proceedings. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.