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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. W1-11-1891

ORDER TO INITIATE CONTESTED
CASE

CONTESTED CASE NAME: *In re Alvah and Barbara Fenn*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Contested case initiated and status conference set for **December 3, 2021 at 4:00 PM**
NUMBER OF PAGES: 17
DATE OF FILING: October 20, 2021

General Explanation

This Order begins the process necessary to adjudicate claims made for rights to appropriate water for use on land the Arizona Department of Water Resources identified as previously owned by Alvah F. and Barbara H. Fenn. This contested case is one of the many cases in the General Stream Adjudication for the San Pedro River Watershed to determine legal

1 rights to water. Other cases in which claims have been made for legal rights to water in the San
2 Pedro River Watershed have been completed, are in the process of determining water rights, or
3 awaiting initiation. The purpose of the General Adjudication is to determine the rights of those
4 persons who filed statements of claimant for rights to use appropriable water in Arizona. The
5 General Adjudication will also determine water rights in the Upper Salt, Verde, Upper Gila,
6 Lower Gila, Agua Fria, and Upper Santa Cruz watersheds.
7

8 In this case, Alvah F. Fenn filed two Statements of Claimant on July 10, 1980 for rights
9 to water in the southeast quarter of the southeast quarter of the southeast quarter of Section 28
10 Township 16S Range 20E. The Arizona Department of Water Resources ("ADWR")
11 investigated the claims, which it characterized as claims for irrigation use and prepared a report
12 known as Watershed File Report ("WFR") 112-17-BAB-002 published in the Final San Pedro
13 River Watershed Hydrographic Survey Report (1991). A copy of the WFR is attached as
14 Attachment A. A copy of the map of 112-17-BAB-002 prepared by ADWR for the WFR is
15 attached as Attachment B with the land associated with this case labeled as "(2)".
16

17 The WFR found three irrigation uses of water supplied by one well located within the
18 subflow zone on the land described in the WFR. The WFR found another well that supplies
19 water for stock watering use and that well is also within the subflow zone. After ADWR issued
20 the WFR, objections were filed to the findings made in the WFR. The purpose of this case is to
21 consider the claims made for water rights that are the subject of the WFR and resolve the
22 objections to the WFR.
23

24 **Claimants & Landowners**

25
26 The WFR identified two Statements of Claimant ("SOC") relevant to the potential water
27 right: 39-6663 and 39-6665. Alvah F. Fenn filed the SOC's claiming water for irrigation use and
28

1 that water was first put to beneficial use on the property in 1918. The WFR lists Alvah F. and
2 Barbara H. Fenn as the owners of the property described as located in the southeast quarter of
3 Section 28 Township 16S Range 20E. On August 12, 1998, Alvah F. and Barbara H. Fenn
4 conveyed the land described in the WFR to Jenifer J. and Michael F. O'Callaghan by warranty
5 deed, recorded as document no. 1988-16760. The public records of the Arizona Department of
6 Water Resources contain an assignment of both SOCs to Michael and Jenifer O'Callaghan
7 ("Claimants") on June 24, 1991.
8

9 Jenifer J. and Michael F. O'Callaghan conveyed the land by warranty deed to Lynette H.
10 and Stuart A. Lott as tax parcel no. 208-61-001, recorded as document no. 2001-07377 on March
11 19, 2001. On July 31, 2009, Lynette H. and Stuart A. Lott conveyed, by warranty deed, tax
12 parcel no. 128-61-001 as five lots: A, B, C, D, and E to Rhino Investments, LLC, and Arizona
13 Limited Liability Company, recorded as document 2009-18795. Rhino Investments, LLC has
14 conveyed those five lots to Shannon E. and Jennifer Rea Thomas as tax parcel nos. 208-61-001A,
15 208-61-001B, 208-61-001C, 208-61-001D, and 208-61-001E, recorded as document 2021-
16 05272 on February 26, 2021. The Cochise County Assessor lists Shannon E. and Jennifer Rea
17 Thomas as the current owners of the land described in the WFR. A copy of a map prepared by
18 the Cochise County Assessor showing these tax parcels is attached as Attachment C. The WFR
19 area is outlined in blue on the tax parcel map in Attachment C.
20
21

22 **IT IS ORDERED:**

- 23
- 24 1. Contested Case. This contested case shall be known as *In re Alvah and Barbara*
25 *Fenn* and it will determine appropriable water rights asserted in the Statements of Claimant and
26 objections that were filed to Watershed File Report 112-17-BAB-002 published in the Final San
27 Pedro River Watershed Hydrographic Survey Report (1991). Copies of objections can be found
28 under the case name and number on the following website:

1 [http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)
2 [asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/whatsNew.asp)

3 2. Litigants. The litigants in this contested case are the Claimant³, the current
4 landowners, all persons who filed objections to the Watershed File Report who are listed on
5 Attachment D, and parties who are allowed to intervene by order.

6
7 3. Court-Approved Mailing List.

8 A. The initial Court-approved mailing list for this case shall include all
9 persons listed on Attachment D to this order. The list may be modified only by
10 filing a motion with the Special Master to amend the Court-approved mailing list.
11 Litigants are responsible for using the current Court-approved mailing list.


12
13 B. A copy of any pleading filed with the Clerk of the Maricopa County
14 Superior Court in this case shall be served upon each person listed on the Court-
15 approved mailing list.

16
17 C. Claimants wishing to be added or removed from the mailing list shall file
18 a motion with the Special Master. Parties allowed to intervene will be
19 automatically added to the Court-approved mailing list.

20
21 D. The Clerk of the Court will send copies of all minute entries and orders
22 issued in this case to the parties listed on the Court-approved mailing list. Upon
23 request, the Clerk of the Court will provide copies by email. Parties may request
24 emailed copies of minute entries and orders by completing and submitting a
25 CONSENT FOR ELECTRONIC RECEIPT OF WATER CASE DOCUMENTS,
26 which is attached as Attachment E.
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1 4. Status Conference. An initial status conference shall be held to determine whether
2 the current landowners intend to pursue claims for rights to appropriable water for irrigation and
3 stock watering uses. The Status Conference shall be held on **December 3, 2021 at 4:00 p.m.**
4 The Status Conference shall be held using the Court Connect program. Instructions for Court
5 Connect are attached as Attachment F. If you receive this Order by email, click on the red box
6 "Join Court Connect Hearing" on the attached instructions to make an appearance. If you do not
7 receive this Order by email, log into the Court Connect program on the internet by typing
8 <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend
9 telephonically using the telephone number and access code included in the instructions for Court
10 Connect. If you do not have access to the internet, you may attend telephonically using the
11 telephone number and access code included in the instructions for Court Connect. You may also
12 attend telephonically using the following numbers:

13
14 Instructions for telephonic participation:
15 Dial: 602-506-9695 (local)
16 1-855-506-9695 (toll free long distance)
17 Dial Collaboration (conference) Code 357264#

18
19 
20 SUSAN WARD HARRIS
21 Special Master
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On October 20, 2021, 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, a copy of which is attached hereto as Attachment D, and to all persons listed on the Court-approved mailing list for W-1, W-2, W-3, and W-4 (Consolidated).


Emily Natale

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ATTACHMENT A

LAND OWNER	WATERSHED FILE
-----	REPORT NUMBER
FENN, ALVAH F.	112-17-BAB-002
& BARBARA H.	

APPLICABLE FILINGS AND DECREES

CLEARLY STATED INFORMATION FROM FILINGS AND DECREES **W1-11-1891**

FILING NUMBER	FILING STATUS	USES	QUANTITY IN AFA	USE LOCATION SECTION	TWNP	RNGE	CLAIM DATE	DIVERSION LOCATION SECTION	TWNP	RNGE
39-0006663	QUE.RECD	IRRIGATION	7.00	SESESE28	160S	200E	1918	SWSESE28	160S	200E
39-0006665	QUE.RECD			28	160S	200E		SWSESE28	160S	200E

DWR ANALYSIS OF FILINGS AND DECREES

FILING NUMBER	USES CLAIMED OR REFERENCED	USES FOUND BY DWR	APPLIES TO DIVERSIONS	APPLIES TO PWR NUMBERS
39-0006663	IRRIGATION	IRRIGATION	WO1	IROO1, IROO2
39-0006665			WO2	

DIVERSIONS

DIV #	SECTION	TWNP	RNGE	DIVERSION NAME	WATER SOURCE AND CLASSIFICATION
WO1	SESESE28	160S	200E	UNNAMED	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER
WO2	SESESE28	160S	200E	UNNAMED	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER

USES

PWR #	SECTION	TWNP	RNGE	SUPPLIED BY DIVERSIONS	WATER SOURCES	PHOTO DATE	SOURCE CHANGE	FACILITY NAME
IROO1	SESE28	160S	200E	WO1	GROUNDWATER : ZONE 1	1976	NO	
IROO2	SESE28	160S	200E	WO1	GROUNDWATER : ZONE 1	1979	NO	
IRO90	SESE28	160S	200E	WO1	GROUNDWATER : ZONE 1	1979	NO	

PWR SUMMARY

PWR #	APPLICABLE ADJ FILINGS	APPLICABLE PRE FILINGS	*APPARENT FIRST USE DATE*	DATE BASIS FOR DATE	WATER SOURCES AND CLASSIFICATIONS
IROO1	39-0006663	NONE	1976	1976 AERIAL PHOTO	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER
IROO2	39-0006663	NONE	1979	1979 AERIAL PHOTO	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER
IRO90	39-0006663	NONE	1979	1979 AERIAL PHOTO	GROUNDWATER : ZONE 1 OF THE SAN PEDRO RIVER
NONE	39-0006665	NONE			

QUANTITIES OF USE

PWR #	QUANTIFICATION TYPE	ACRES	CROP TYPE	EFF	WATER DUTY	ESTIMATED VOLUME	REMARKS
IROO1	MAX. OBSERVED REGIONAL	10.3	SORGHUM	32%	3.2 AF/AC	33.0 AFA	
	MAX. POTENTIAL	10.3	AVE. CROP	50%	5.4 AF/AC	55.6 AFA	
	MAX. OBSERVED REGIONAL	10.3	ALFALFA	32%	10.4 AF/AC	107.1 AFA	
IROO2	MAX. OBSERVED REGIONAL	13.2	SORGHUM	32%	3.2 AF/AC	42.2 AFA	
	MAX. POTENTIAL	13.2	AVE. CROP	50%	5.4 AF/AC	71.3 AFA	
	MAX. POTENTIAL REGIONAL	13.2	ALFALFA	32%	10.4 AF/AC	137.3 AFA	
IRO90	REGIONAL	14.2	NO CROP				DISCONTINUED IRRG.

FILINGS AND DECREES

FILING 39-6665 - NO WATER USES OR USE AMOUNTS WERE CLAIMED. NO WATER USES WERE MATCHED TO THIS FILING.
FILINGS 39-6663 & 39-6665 - UNIFORM QUESTIONNAIRES WERE RECEIVED WHICH REFLECT INFORMATION PREVIOUSLY PROVIDED IN THE ORIGINAL STATEMENTS OF CLAIMANT.

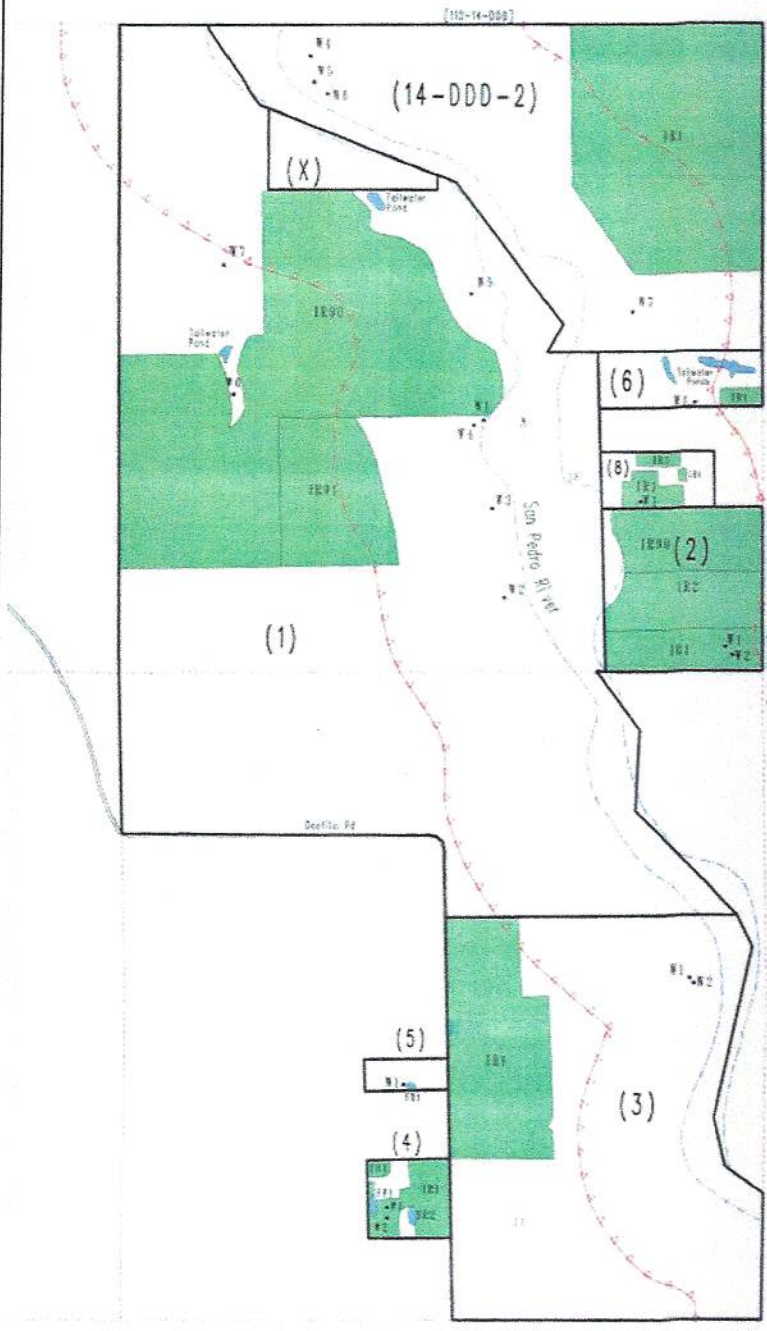
DIVERSIONS

W1 - WELL PROVIDES WATER FOR IRRIGATION USES.
W2 - WELL PROVIDES WATER FOR STOCKWATERING USES.
THE CLAIMANT HAS THE ABILITY TO RECEIVE WATER FROM THE POMERENE WATER USERS ASSOCIATION, BUT HAS NOT USED THIS WATER SOURCE FOR MANY YEARS.

USES AND RESERVOIRS

IR1 & IR2 - IRRIGATED SORGHUM.
IR90 - DISCONTINUED IRRIGATION: D.W.R. HAS DETERMINED THAT NO IRRIGATION HAS OCCURRED ON A PORTION OF THIS PROPERTY IN THE LAST FIVE YEARS, BUT THERE HAS BEEN IRRIGATION WITHIN THE PAST TEN YEARS BASED UPON A REVIEW OF HISTORICAL AERIAL PHOTOGRAPHY AND FIELD INVESTIGATIONS.

ATTACHMENT B



Subregion Map Legend

—	General Boundary	—	Canal or Ditch
---	Irrigation Boundary	---	Spillage
---	Abutts of Highways	---	River or Wash
---	Section Boundary	---	Zone 1
■	Irrigation	●	Well (W)
■	Canal or Stockwater	○	Spring (S)
■	Diversion (D)	+	Section Pump (P)
■	Reserve Section Number	+	Industrial Use

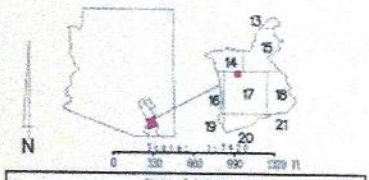
POTENTIAL WATER RIGHT CODES

00	Overbank	05	Recreational Irrigation
01	Industrial	06	Stockwater
02	Agricultural Irrigation	07	Small Reservoir
03	Other Irrigation Use	08	Stockwatering
04	Flower	09	Widened Use
		10	Primary Storage

(1) - Owner Identification Number

* Land Owner / Lessee / Provider *

AGRICULTURE WITHOUT WATER RIGHTS
 1. 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000.



State of Arizona
 Department of Water Resources
 ADJUDICATIONS DIVISION

MAP OF WATER USES

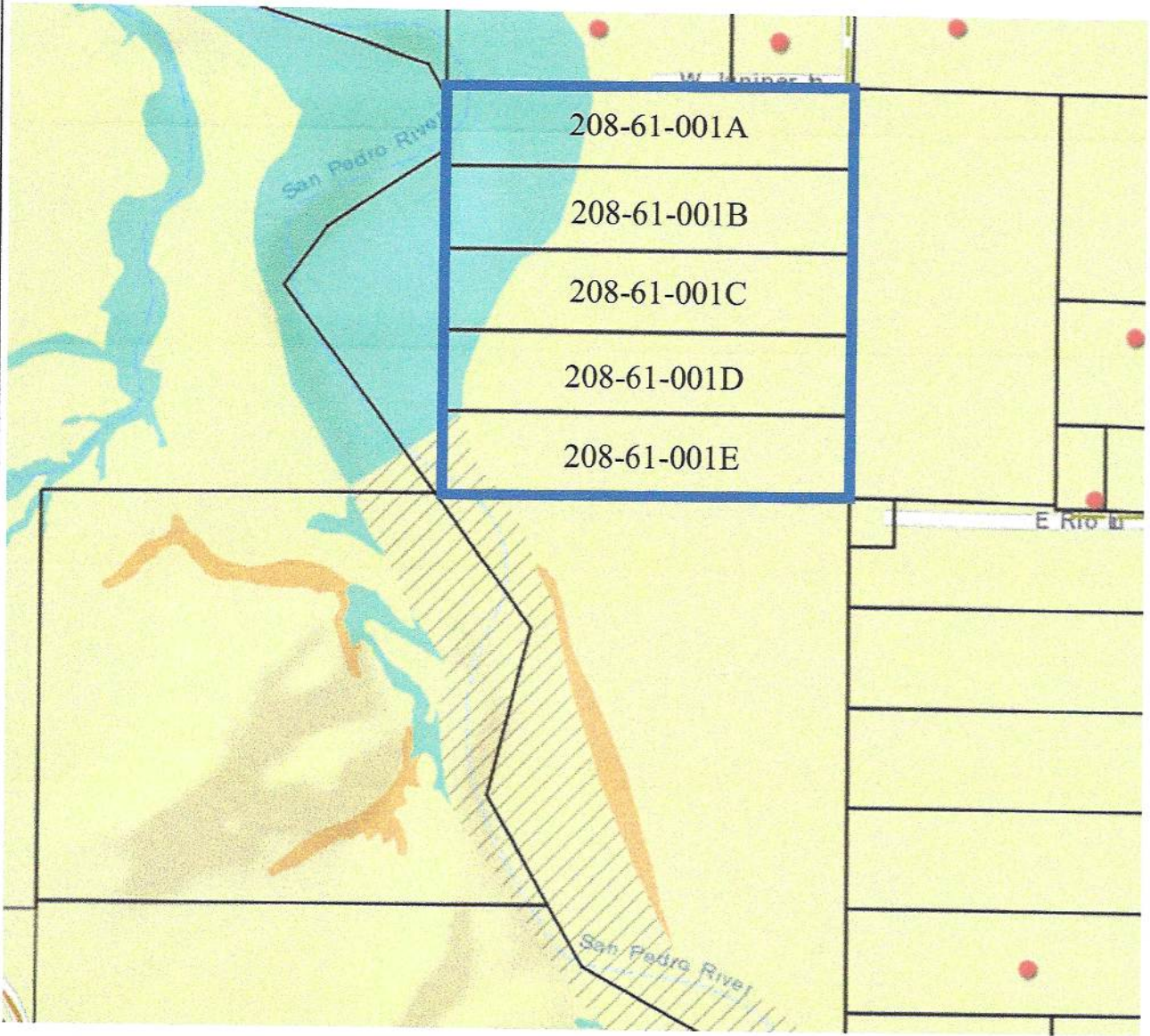
River System:	GILA
Watershed:	SAN PEDRO
Subwatershed:	BEVSON
Region:	17-DAB
Date:	November 1991

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ATTACHMENT C

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Arizona Department of Water Resources
Kimberly Parks
Janet L. Miller
P. O. Box 36020
Phoenix, AZ 85067

ASARCO Incorporated
Lauren J. Caster
Fennemore Craig, P.C.
2394 East Camelback Road
Suite 600
Phoenix, AZ 85016-3429

BHP Copper, Inc.
John D. Burnside
Snell & Wilmer, L.L.P.
400 E. Van Buren Street, Ste 1900
Phoenix AZ 85004

Clerk of the Superior Court
Maricopa County
Attn: Water Case
601 West Jackson Street
Phoenix, AZ 85003

Gila River Indian Community
Linus Everling and Thomas L. Murphy
Office of the General Counsel
P. O. Box 97
Sacaton, AZ 85147

Michael and Jennifer O'Callaghan
P.O. Box 9
Camp Verde, AZ 86322

Michael O'Callaghan
P.O. Box 1028
Benson, AZ 85602

San Carlos Apache Tribe
Joe P. Sparks and Laurel A. Herrmann
The Sparks Law Firm, P.C.

1 7503 First Street
2 Scottsdale, AZ 85251-4573

3 Salt River Project
4 John B. Weldon, Jr., Mark A. McGinnis, and Michael Foy
5 Salmon, Lewis & Weldon PLC
6 2850 E Camelback Rd.
7 Suite 200
8 Phoenix, AZ 85016

9 Special Master Susan Ward Harris
10 Superior Court of Arizona
11 201 W. Jefferson Street
12 Courtroom 301
13 Phoenix, AZ 85003

14 The United States
15 F. Patrick Barry
16 U.S. Department of Justice
17 P. O. Box 7611
18 Washington, DC 20044-7611

19 Shannon and Jennifer Thomas
20 1350 N. Pomerene Rd.
21 Benson, AZ 85602

22 Tonto Apache Tribe
23 Richard Palmer, Jr., Jeremiah Weiner
24 and Lauren Mulhern
25 Rosette, LLP
26 565 W. Chandler Blvd. Suite 212
27 Chandler, AZ 85225

28 Yavapai-Apache Nation
S. Montgomery, R. Interpreter, J. Tomkus
Montgomery & Interpreter, Plc
3301 E. Thunderbird Road
Phoenix, AZ 85032

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ATTACHMENT E

**CLERK OF THE COURT
SUPERIOR COURT OF ARIZONA**

Jeff Fine
Clerk

**MARICOPA COUNTY
Customer Service Center
601 West Jackson
Phoenix, AZ 85003**

602 372-4115
Water Case Clerk

CONSENT FOR ELECTRONIC RECEIPT OF WATER CASE DOCUMENTS

In an effort to provide more timely and cost effective distribution of copies of filed Water Case documents, the Clerk of the Superior Court would like implement electronic distribution via email. To do so, we require your consent to receive copies of documents electronically at an email address provided to our office.

This consent is voluntary and can be rescinded if you so choose. If you no longer wish to receive Water Case documents from the Clerk of Superior Court electronically, please send written notification to the Clerk of the Superior Court Water Case Specialist at the email address below requesting that all future records be sent in paper form.

Please note that if you consent to receive documents via email, you must notify the Clerk's Office of any change to your email address to avoid delay in receiving future filings. In the event there is no valid email address on file with the Clerk of the Superior Court Water Case Specialist, documents will be mailed to the address provided.

If you wish to consent to receive future documents via email, please either fill out the information below and mail to our office or provide the below information to Mayra.Antelo@Maricopa.Gov.

Preferred email address:

Alternate email address:

Physical address:

Phone number:

Firm Name:

Name [Printed]:

Signature:

Date:

Thank you,

Mayra Antelo
Clerk of the Superior Court
Water Case Specialist
(602) 372-5375 options 7,1,3,4

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ATTACHMENT F



Court Connect Hearing Notice for In re Alvah and Barbara Fenn

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 Alvah and Barbara Fenn Contested Case No. W1-11-1891

Start Date/Time: December 3, 2021 at 4:00 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](#)

