

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

January 26, 2024

CLERK OF THE COURT
S. Ortega
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

FILED: January 30, 2024

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)

In re: ASLD - John and Mary Lou Smith

Contested Case No. W1-11-2844

MINUTE ENTRY

Courtroom 301 – Central Court Building

11:00 a.m. This is the time set for a Status Conference to discuss the four proposed potential water rights before Special Water Master Sherri Zendri.

The following parties/attorneys appear virtually through Court Connect:

- Kevin Crestin on behalf of the Arizona State Land Department (“ASLD”)
- Carrie Brennan on behalf of the Arizona Game and Fish Commission (“AZ Game and Fish”)
- Bradley Pew observing on behalf of American Smelting and Refining Company (“ASARCO”)
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Katrina Wilkinson on behalf of Salt River Project (“SRP”)
- Robyn Interpreter on behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaqui Tribe)
- Brett Stavin on behalf of the Tonto Apache Tribe

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

Kevin Crestin for ASLD updates the Court as to Stockwatering 001 (“SW001”). This was one of the abstracts provided in the January 5, 2024 ADWR filing. Mr. Crestin proposes filings to fill in the two blanks on this abstract as follows: The blank for Basis of Right should be #36-4959. Mr. Crestin states that the ADWR filing mentions the location not being the same as what is on the map, and ASLD is happy to amend that in the 36 filing if necessary. Also, the blank left in the Priority Date should be 12/31/1883. All of the abstracts now have an additional attribute listed as flow rate. Mr. Crestin is not opposed to the additional attribute but does not believe it is necessary on these four abstracts.

Katrina Wilkinson for SRP agrees with the Basis for Right, the Priority Date, and the comment on the Flow Rate not being necessary in these abstracts. Mr. Wilkinson understands that the convention for Place of Use has changed to where the stream enters the WFR and notes that it doesn’t match the SOC and the Basis of Right.

The Court inquires of ADWR if the location of the Place of Use needs to be changed based on how it is described in the Basis of Right or if it can be addressed in the approval.

Kimberly Parks for ADWR states that ADWR would leave that up to the Court and that ADWR would accept whatever abstract the Court approves.

The Court asks that the Basis of Right be updated so that everything matches.

Mr. Crestin agrees with Ms. Parks in that the Court approve the abstract and then the underlying filings will be amended to match.

Mr. Crestin gives an update on Stockpond 001 (“SP001”). This was also one of the abstracts provided in the January 5, 2024 ADWR filing. The owner was left blank. He understands that if the Court approves the abstract with the pending application for ASLD and ASLD as the owner, that will work for ADWR as it relates to the two competing applications. Mr. Crestin recommends that the State of Arizona and State Land Department be listed as the owner and that #38-94290 be listed as the Basis of Right and that the Priority Date listed should be 12/31/1946. #38-94290 is a pending application at this time. It is noted that John Smith filed the other application and is no longer a lessee.

Ms. Parks agrees with Mr. Crestin’s explanation and further discusses the application process.

The Court inquires as to where Mr. Smith is at this time and what he has to demonstrate that he is a still a lessee.

Ms. Parks states that ADWR does not keep track of ASLD’s lessee information. Ms. Parks states that ADWR relies on the two competing applicants to resolve the ownership issue.

Mr. Crestin informs the Court that he does not have any information on Mr. Smith other than he is not currently a lessee.

Discussion is held regarding the issue of pending applications. Mr. Crestin suggests that moving forward the Court hold a status conference to address the applications and then Court can issue an order based on the status conference and whose name the water rights should be in. Mr. Parks disagrees that a

pending application is a valid Basis of Right and suggests that if the Court tells ADWR to go ahead and approve the application on file by ASLD, ADWR will approve it so that the applicant will have a valid Basis of Right to put in the abstract.

Carrie Brennan for AZ Game and Fish understands in the Thorson di minimis decision a pending application is a valid Basis of Right under the summary adjudication procedures and once the applications are in the adjudication process, this could be done through the court.

Ms. Parks requests clarification on pending applications in the Thorson order, and further discussion is held.

The Court is comfortable approving pending applications so long as it is understood that the pending applications eventually become final. The matter of the 38 filings does not need to be decided today.

Ms. Wilkinson requests clarification on the Priority Date being 12/31/1946. As to formatting and detail, SRP believes it would be better for the Places of Use and Point of Diversion to be more descriptive as was mentioned in their comments in the original draft abstracts in August.

Mr. Crestin updates the Court regarding Stockwatering 002 (“SW002”). SW002 is di minimis, an abstract was completed by ADWR in the first round, and ASLD has no objection to the proposed abstract.

No comments are made on SW002.

Mr. Crestin updates the Court regarding Stockpond 002 (“SP002”). SP002 is not di minimis, it has been certificated, and the certificate was assigned to ASLD by ADWR on January 3, 2024. ASLD has circulated a proposed map and abstract to the objectors in this matter. His understanding is that ASLD, SRP and Yavapai Apache Nation have an agreement in principle to the abstract and map. At this time, there are no further comments or objections.

Mr. Crestin will send final submissions on the proposed SW001 and SP001 to the Court for approval. As to SP002, ASLD intends to file a motion to approve the abstract in a stipulated PWR.

For the reasons set forth on the record,

IT IS ORDERED that the Tonto Apache and San Carlos Apache Tribes shall have until **Friday, February 9, 2024**, to get back to ASLD.

The Court will await the final submissions from ASLD to put together a final order for all four abstracts.

11:25 a.m. Matter concludes.