

SUPERIOR COURT OF ARIZONA
MARICIPA COUNTY

May 29, 2024

CLERK OF THE COURT

HONORABLE SCOTT BLANEY

S. Motzer
Deputy

Case No.

Contested Case No. W1-11-3107

FILED: 05/29/24

In Re: The General Adjudication of all
Rights to Use Water in the Gila River
System and Source

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

In Re: *State Land Department – Paul L. Sale Investment Co.*

UNDER ADVISEMENT RULING

The Court has reviewed and considered the following:

1. *Final Report of the Water Master* in Contested Case No. W1-11-3107, *In re Paul L. Sale Investment Company*, dated March 24, 2023;
2. Arizona Department of Water Resources' *Comments Concerning Special Master's Final Report Finding the Adjudication Court Has Jurisdiction Over Severances and Transfers "Post-Abstract" Water Rights*, filed September 29, 2023;
3. Salt River Project's *Response to Arizona Department of Water Resources' Comments on Special Master Report*, filed December 18, 2023;
4. City of Phoenix's *Joinder in Salt River Project's Response in Support of the Special Master's Final Report*, filed December 18, 2023;
5. Arizona Department of Water Resources' *Reply to Responses of SRP and City of Phoenix*; and
6. The arguments received at the March 29, 2024 oral argument.

The issue before the Court is whether the Adjudication Court (also referred to herein as the "Court") has jurisdiction to receive and consider a claimant's request to sever and transfer ("S&T") a water right approved by the Special Master for inclusion in the Catalog of Proposed Water Rights, created pursuant to §15.00 Rules for Proceedings Before the Water Master (the "Catalog"), before the water right is finally decreed. As stated by the Special Master on page 2 of her March 24, 2023 *Final Report*:

Here, the water rights have not been finally decreed. The question presented occurs at a very specific point in the water adjudication process. It occurs after the following steps in the adjudication process have been completed: the Adjudication Court assumed jurisdiction over the claimed rights, a contested case was initiated to adjudicate the rights, and proposed abstracts describing the attributes of the water rights were approved for inclusion in the Catalog. The final step in the process is for the Catalog to be submitted to the superior court judge assigned to the adjudication for review and a final decree entered. This final step has not yet begun.

For the reasons stated below, the Court determines that jurisdiction over S&Ts remains with the Director, and not with this Court, until the Court has issued a final decree.

Brief Statutory Structure and Procedural History

The Arizona Legislature amended the Water Code in 1979 to provide a process for general stream adjudications. Pursuant to Title 45, Chapter 1, Article 9 (“General Adjudication Water Rights”) water users on a river system and source or any state agency may petition to have determined in a general adjudication “the nature, extent and relative priority of the water rights of all persons in the river system and source.” A.R.S. § 45-252(A). Claimants must file a statement of claimant that details any claimed water right, including, *inter alia*, the amount of water and location of irrigated lands. A.R.S. § 45-254(A)&(C). Subsequent to the filing, the Arizona Department of Water Resources (“ADWR”) is tasked with investigating the claims and preparation of a technical report for the consideration of the Court in a final adjudication, including any evidence submitted by claimants or objectors. A.R.S. § 45-256. ADWR has further responsibilities in Article 9 that are beyond the scope of this introductory description.

In the adjudication, the Special Master conducts hearings and receives testimony to determine the relative water rights of each claimant. The Special Master then prepares findings of fact, conclusions of law, and other recommendations in a report to the Adjudication Judge.¹ Each claimant may file written objections to the Special Master’s final report within a prescribed timeline. A.R.S. § 45-257(A).

The Adjudication Judge then reviews the final report and any objections. The Judge ultimately determines the extent and priority date of, and adjudicates any interest in or right to use the water of the river system and source. The Judge’s ruling is embodied in a final judgment or decree, which is referred to the Director of ADWR “for administration and enforcement under the continuing jurisdiction of the court.” A.R.S. § 45-257(B).

The general adjudication must be “brought and maintained in the county in which the largest number of potential claimants resides.” A.R.S. § 45-252(C). For that reason, the Gila Adjudication was initiated in Maricopa County, formally referred to as *In Re The General Adjudication Of All Rights To Use Water In The Gila River System and Source*.

¹ The terms “Adjudication Judge,” “Judge,” “Adjudication Court,” and “Court” are used interchangeably throughout this ruling.

United States v. Verde Ditch Co., 2017 WL 1364860 at *4 ¶¶ 16, 17 (App. 2017) (memorandum).

The present issue arises in Contested Case No. W1-11-3107. According to the Special Master’s March 24, 2023 *Final Report*, the parties stipulated to a set of proposed abstracts for irrigation rights, fully resolving all remaining disputes in the case, and submitted those abstracts to the Special Master for approval. The Special Master subsequently approved the abstracts on April 13, 2022 and added them to the Catalog. *Final Report* at pg. 3.²

At this point, after the abstracts have been approved by the Special Master and included in the Catalog, but before the issuance of a final decree, the Salt River Agricultural Improvement and Power District and Salt River Valley Water Users’ Association (collectively “SRP”) seeks to change the place and purpose of use of water rights as described in the abstracts. The requested change is called a “severance and transfer,” (“S&T”) and, if granted, would alter the attributes of the water rights included in the proposed abstracts, including the type and place of use. *Id.* at pg. 3.

By statute, SRP must obtain permission for the S&T pursuant to A.R.S. § 45-172, which vests authority for the receipt, processing, and approval of S&Ts in the Director of ADWR. But SRP argued to the Special Master, and argues here, that the Court has jurisdiction to approve or deny applications for S&T once an abstract is approved and included in the Catalog because at that point, the Adjudication Court has assumed jurisdiction over the claim. SRP therefore urges this Court to exercise jurisdiction over its soon-to-be-filed application for S&T.

The Special Master agreed with SRP in her *Final Report* and ruled that the Adjudication Court had jurisdiction over S&Ts once the Special Master has approved the abstracts and included them in the Catalog. ADWR filed *Comments* concerning the *Final Report* and urged this Court to overrule the Special Master’s ruling on S&T jurisdiction.

THE COURT FINDS that the Special Master’s ruling on S&T jurisdiction – although addressing procedure for processing of S&Ts – is based entirely on conclusions of law and, more specifically, statutory interpretation. The Court reviews the Special Master’s conclusions of law *de novo*. Rule 53(f)(4), Ariz.R.Civ.P.

Legal Analysis

The S&T process is governed by A.R.S. § 45-172, which states:

- A. A water right may be severed from the land to which it is appurtenant or from the site of its use if for other than irrigation purposes and with the consent and approval of the owner of such right may be transferred for use for irrigation of agricultural lands or for municipal, stock

² All references in this ruling to the Special Master refer to the former Special Master, Susan Harris. The Special Master is sometimes referred to as the “Water Master.”

watering, power and mining purposes and to the state or its political subdivisions for use for recreation and wildlife purposes, including fish, without losing priority theretofore established, subject to the following limitations and conditions:

1. Except as otherwise provided in this section no such severance or transfer shall be made *unless approved by the director*, and the approval of the director shall prescribe the conditions of the approval.

7. An application for severance and transfer of a water right *shall be filed with the director*[.]

Id. (emphasis added). Thus, pursuant to Arizona statute, the authority to receive and process applications for S&Ts, and the authority to approve or deny an S&T, rests with the Director. ADWR is correct that the statute unambiguously grants those authorities to the Director and not to the Adjudication Court. In such cases, where “the statute is subject to only one reasonable interpretation, we apply it without further analysis.” *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017) (internal quotations omitted).

But here, that is not the end of the analysis. SRP cites a different, related statute that grants broad, general authority to the Adjudication Court. SRP argues that the Court has jurisdiction under that statute to receive and adjudicate newly filed S&Ts once the Court has assumed jurisdiction over a claim but before the Court has issued a final decree for the watershed.³

SRP’s argument has some merit. As outlined above, Article 9 of Title 45 addresses general adjudication of water rights, that is, when water users or a state agency “seek to have determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in the river system and source.” The Court’s duties in such adjudications include the duty to “determine the extent and priority date of and *adjudicate any interest* in or right to use the water of the river system and source[.]” A.R.S. § 45-257(B)(1) (emphasis added). Based upon this broad language, SRP argues that the Court has jurisdiction over S&Ts after the Court begins to exercise its authority to adjudicate the relative water rights. According to SRP, an application for S&T is an “interest in or right to use the water of the river system and source.”

The language of the two statutes appears to conflict: A.R.S. § 45-172(A)(1)&(7) gives the Director exclusive jurisdiction to process and approve S&Ts, while A.R.S. § 45-257(B)(1) directs the Court to “adjudicate *any interest* in or right to use the water of the river system and source[.]” (emphasis added). Thus, the broad, all-encompassing language of § 45-257(B)(1) appears to preempt by implication § 45-172(A)(1)&(7) once the Adjudication Court becomes involved. But the Court will “not construe a statute [or any

³ The parties agree, consistent with A.R.S. § 45-257(B)(3), that the Court has jurisdiction over S&Ts after a final decree is entered. See *Final Report* at pg. 2; ADWR’s *Comments* at pg. 6 and *Reply* at pg. 4.; and SRP’s *Response* at pg. 6.

portion thereof] as repealed by implication by another if it can avoid doing so on any reasonable hypothesis.” *State Land Dept. v. Tucson Rock and Sand Co.*, 107 Ariz. 74, 77 (1971 (internal quotations omitted)). Instead, the Court “has a duty to harmonize statutes where there is a possibility of conflict.” *Id.*; see also *Premier Physicians Group, PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9 (2016) (“When possible, we seek to harmonize statutory provisions and avoid interpretations that result in contradictory provisions.”). The Court can harmonize these seemingly conflicting statutes by determining that the broader language of A.R.S. § 45-257(B)(1) does not impliedly incorporate the more specific language of § 45-172, as follows.

First, § 45-172 governs the adjudication of S&Ts *specifically* and assigns to the Director the authority to process and grant/deny applications, whereas § 45-257(B)(1) is a broader statement of the Court’s duty to determine water rights under Article 9, with no mention of S&Ts. “[I]n general, the more specific statute controls over the less specific statute.” *State v. Chopra*, 241 Ariz. 353, 355 ¶ 6 (App. 2016).

Second, interpreting the broad language of § 45-257(B)(1) to exclude S&Ts harmonizes the statute with § 45-172, which *only* concerns S&Ts. *Stambaugh*, 242 Ariz. at 509 ¶ 7 (“In construing a specific provision, we look to the statute as a whole and we may also consider statutes that are *in pari materia* – of the same subject or general purpose – for guidance and to give effect to all of the provisions involved.”).

Finally, even if § 45-257(B)(1) can be read broadly to encompass the S&T process, none of the procedures or standards listed in § 45-172 for adjudicating an S&T appear anywhere in § 45-257 or in Article 9 generally, nor does § 45-257 refer to or expressly incorporate § 45-172. The only express statutory connection between the Director’s authority in § 45-172 and the Court’s authority is found in § 45-172(B), which governs judicial review (appeal) of the Director’s decision on an S&T. It is therefore reasonable to assume that the Legislature did not intend for the Adjudications Court to process applications for S&T prior to entering a final decree, and the Court’s only role in the S&T process was on appeal of a Director decision on an S&T application.⁴

THE COURT THEREFORE FINDS that the Director retains exclusive jurisdiction pursuant to A.R.S. § 45-172 over all applications for severance and transfer (“S&T”) of a water right until the point that the Adjudication Court issues a final decree.

⁴ Indeed, the Adjudications Court is not properly equipped to engage in the procedural steps mandated in § 45-172(A)(7), nor does the Court have the subject matter expertise or the staffing to ensure that an application for S&T complies with the limitations found in § 45-172(A)(2)-(5). The latter consideration is particularly relevant when there is no adverse party objecting to a particular application for S&T. Our system of litigation is adversarial by design, and the Court relies in part upon opposing parties to identify issues with their adversaries’ allegations and requests for relief. *Dynometrics, Inc. v. Arizona Department of Economic Security*, ___ P.3d ___, 2024 WL 1173067 at *7, ¶ 34 (App. 2024) (“In judicial proceedings, it is the litigants, not the judges, who generally define the scope of inquiry and marshal the evidence on which the judicial judgment is ultimately based.”) (internal quotations omitted). Without an adverse party identifying where an S&T application fails to comply with § 45-172(A)(2)-(5), statutory requirements could be missed by the Court.

Additional Concerns Raised By SRP

SRP's *Response* contemplates that an appeal of the Director's denial of an S&T pursuant to A.R.S. § 45-172(B) could be randomly assigned to a different superior court judge instead of the Adjudication Court. *See Response* at pp. 6-7. But with limited exceptions, appeals related to the Gila Adjudication, regardless of the subject matter of the appeal, will be routed to this Court for determination pursuant to *Gabel v. Tatum*, 146 Ariz. 527 (App. 1985). Pursuant to *Gabel*, disputes over water rights in areas located in the Gila River system may not be litigated outside the Gila Adjudication in Maricopa County Superior Court – the Adjudication Court. *Id.* at 529; *see also United States v. Verde Ditch Co.*, 2017 WL 1364860 at *5-6 ¶¶20, 27 (App. 2017) (memorandum) (finding Yavapai County lacked subject matter jurisdiction to adjudicate water rights despite existence of historical MOU, reasoning: “The general adjudication statute authorizes determination of the nature, extent and relative priority of the water rights of all persons in the river system and source ... [and it] is clear that the Legislature intended for general adjudications to be the single determiners of water rights.”). Thus, this Court is the proper forum to hear appeals of the Director's S&T decisions.⁵

Additionally, SRP raised a concern at oral argument that sending an S&T application to ADWR could result in excessive, seemingly open-ended delays in adjudicating the underlying water case.⁶ While the Director's decision to grant or deny an application for an S&T may involve some additional time, it is not open-ended. There are binding deadlines listed in the Arizona Administrative Code for matters such as S&Ts. *See* R12-15-401(3) (“Within the overall time-frames set forth in subsection (7) ... the Department *shall* notify the applicant in writing that the application is granted or denied.”) (emphasis added). The specific deadlines for notifying the applicant about whether an application for S&T is granted or denied is 420 days. *Id.* at (7). There is an additional 120 days added if the case involves a hearing. *Id.* at (5). These deadlines are specific and nondiscretionary, and may therefore be enforced through a request for mandamus relief. A.R.S. § 12-2021. The mandamus action would be heard by this Court pursuant to the *Gabel* and *Verde Ditch* cases, discussed *supra*.

IT IS THEREFORE ORDERED rejecting the Special Master's determination that the Adjudication Court has jurisdiction over S&Ts once the Special Master has approved abstracts and included them in the Catalog. Instead, the Director maintains exclusive jurisdiction over the processing and approval of S&Ts until the Court has issued a final decree.

⁵ The “limited exceptions” referred to above were generally addressed in *Gabel*, wherein the court stated: “We do not intend, however, by our decision to foreclose the adjudication in Gila County of traditional property disputes, e.g. trespass or easement rights.” *Gabel*, 146 Ariz. at 329.

⁶ SRP argued that one of its S&T applications was filed with ADWR in 2005 and not resolved until approximately 2019. The Court notes that ADWR disputed the allegations at the oral argument and the Court does not have enough information to make a factual finding, nor has the Court been asked to make a finding regarding this particular S&T application.

IT IS FURTHER ORDERED clarifying that the Adjudication Court is the proper forum for an appeal of a decision by the Director regarding an application for S&T, as well as any request for mandamus or injunctive relief arising out of the Gila Adjudication.

IT IS FURTHER ORDERED declining to address ADWR's constitutional arguments because the Court can resolve the issues based upon non-constitutional grounds. *See Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 (2019) (Arizona courts will not reach a constitutional question when the case can be fairly decided on other, non-constitutional grounds).

/s/ HONORABLE SCOTT A. BLANEY

HONORABLE SCOTT A. BLANEY
JUDICIAL OFFICER OF THE SUPERIOR COURT