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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 IN RE THE GENERAL ADJUDICATION
14 OF ALL RIGHTS TO USE WATER IN
15 THE GILA RIVER SYSTEM AND
16 SOURCE

17 W-1 (Salt)
18 W-2 (Verde)
19 W-3 (Upper Gila)
20 W-4 (San Pedro)
21 (Consolidated)

22 Contested Case No. W1-11-2844

23 **ARIZONA DEPARTMENT OF WATER**
24 **RESOURCES' COMMENTS ON**
25 **DRAFT ABSTRACTS AND MAPS**

26 Special Master Sherri Zendri

CONTESTED CASE NAME: *In re ASLD- John and Mary Lou Smith*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report (“HSR”)

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources (“ADWR”) provides notice of filing comments on the draft abstracts and maps as requested in the Order filed July 18, 2023.


NUMBER OF PAGES: Two and three-page attachment

DATE OF FILING: August 25, 2023

1 Pursuant to the July 18, 2023 Order in this matter, ADWR hereby provides
2 comments on the Arizona State Land Department's draft abstracts and maps. ADWR's
3 comments are attached to the original of this Notice being filed with the Clerk
4 (Attachment A) and are being posted to ADWR's website at:
5 <https://new.azwater.gov/adjudications>.

6 **DATED** this 25th day of August, 2023.

7 ARIZONA DEPARTMENT OF WATER
8 RESOURCES

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10 _____
11 Kimberly R. Parks, Deputy Counsel
12 Karen J. Nielsen, Deputy Counsel

13 **ORIGINAL** of the foregoing notice and attachment
14 sent by first-class mail on August 25, 2023, to:

15 Clerk of the Maricopa Superior Court
16 Attn: Water Case
17 601 W. Jackson Street
18 Phoenix, Arizona 85003

19 **COPY** of the foregoing notice and attachment
20 sent by first-class mail on August 25, 2023, to:

21 Special Master Sherri Zendri
22 Maricopa County Superior Court
23 Central Court Building
24 201 West Jefferson Street, Suite 3A
25 Phoenix, AZ 85003-2205

26 **COPIES** of the foregoing notice and attachment
sent by first-class mail on August 25, 2023 to all
parties on the court-approved mailing list
for Contested Case No. W1-11-2844.



ATTACHMENT

**Arizona Department of Water Resources
Comments on Draft Abstracts**

W1-11-2844 In re ASLD – John and Mary Lou Smith

114-03-005-SP001 & 114-03-005-SW002

As stated in the Court Order,¹ the Arizona Department of Water Resources (“ADWR”) previously provided comments on these Potential Water Rights (“PWR”) and abstracts.²

114-03-005-SW001

Arizona State Land Department (“ASLD”) provides 39-6810 as the Statement of Claimant (“SOC”) for this PWR. SOC 39-6810 is for a stockpond use and does not apply to this PWR. According to the 1991 San Pedro River Hydrographic Survey Report (“HSR”), 39-6810 is associated with 114-03-005-SP001 and the HSR does not list any applicable SOC filings for this PWR. Additionally, the Place of Use (“POU”) listed in the proposed abstract by ASLD is NWSW S8 T7S R15E. This location, however, is not where the watercourse enters the WFR. ADWR does not recommend a PWR for this use at this time given that no applicable SOCs have been identified.

114-03-005-SP002

ASLD provides 39-6813 as the SOC and 36-4960 as the Basis of Right for this PWR. According to the HSR, 36-4960 is associated with 114-03-005-SW002, not 114-03-005-SP002. Filings 39-2953, 3R-2019, and 38-72440 also appear to be associated with SP002 and each were filed by the lessees, John and Mary Lou Smith. Furthermore, some of the information provided in ASLD’s proposed abstract does not match what is listed in Basis of Right 36-4960 (see Table 1, below). The priority date listed in the proposed abstract, 6/7/1960, was derived from 3R-2019 and the quantity listed was derived from a Decision

¹ Order Granting Summary Adjudication and Rescheduling Status Conference filed July 18, 2023, in Contested Case No. W1-11-2844, *In re ASLD – John and Mary Lou Smith*, at 2.

² Arizona Department of Water Resources’ Notice of Filing Abstracts and Maps filed February 28, 2023, in Contested Case No. W1-11-2844, *In re ASLD – John and Mary Lou Smith*, at 4.



and Order filed in 1981.³ SP002 was later field-checked by ASLD, and the original Decision and Order was amended to reflect the new, verified reservoir capacity of 24.08 acre-feet (“AF”).⁴ ADWR does not recommend 36-4960 as the Basis of Right for this PWR. Although the HSR lists 38-72440 as the Basis of Right, ADWR recommends 3R-2019 as the Basis of Right for this PWR as this has been certificated and the HSR states that it applies to SP002.⁵ The certificate, issued 9/18/1984, provides a priority date of 6/7/1960 and a quantity of 24.08 AF. In the San Pedro River watershed, the court found that individual stockponds are *de minimis*. However, all stockponds between 4 and 15 AF must have the actual stockpond capacity determined, and an impoundment with a capacity greater than or equal to 15 AF constitutes a small reservoir use instead of a stockpond use. As such, ADWR recommends that this use be adjudicated as a small reservoir with a priority date of 6/7/1960 and a quantity of 24.08 AF.

Table 1

	ASLD Proposed Abstract	36-4960	3R-2019	38-72440	1991 San Pedro HSR
Basis of Right	36-4960	N/A	N/A	N/A	38-0072440
Claimant	ASLD	ASLD	John E. Smith and Mary Lou Smith	John E. Smith	John E. Smith and Mary Lou Smith
Quantity	Not to exceed (?) 4 acre-feet annually with continuous fill	32 AF	24.08 AF	12 AF	32.0 AF
Priority Date	6/7/1960	Prior to 1884	6/7/1960	Prior to 1947	1946

³ Decision and Order, In the Matter of the Application to Appropriate Water and/or to Construct a Reservoir and Store Water for Beneficial Use Nos. R-2004; R-2005; R-2006; R-2007; R-2008; R-2019; and, R-2020 filed June 4, 1981, at 4. Located in the 3R-2019 file which may be viewed on-line through ADWR’s imaged records available at <https://infoshare.azwater.gov/docushare/dsweb/Get/SWDoc-28326/Final1053cX.PDF>.

⁴ Amended Decision and Order, In the Matter of the Application to Appropriate Water and/or to Construct a Reservoir and Store Water for Beneficial Use Nos. R-2004; R-2005; R-2006; R-2007; R-2008; R-2019; and, R-2020 filed September 22, 1981, at 1.

⁵ See also, the 1991 San Pedro HSR at 116, which notes that “SP2 – Filing 3R-2019 states a certificated stockpond capacity of 24.08 acre-feet.”

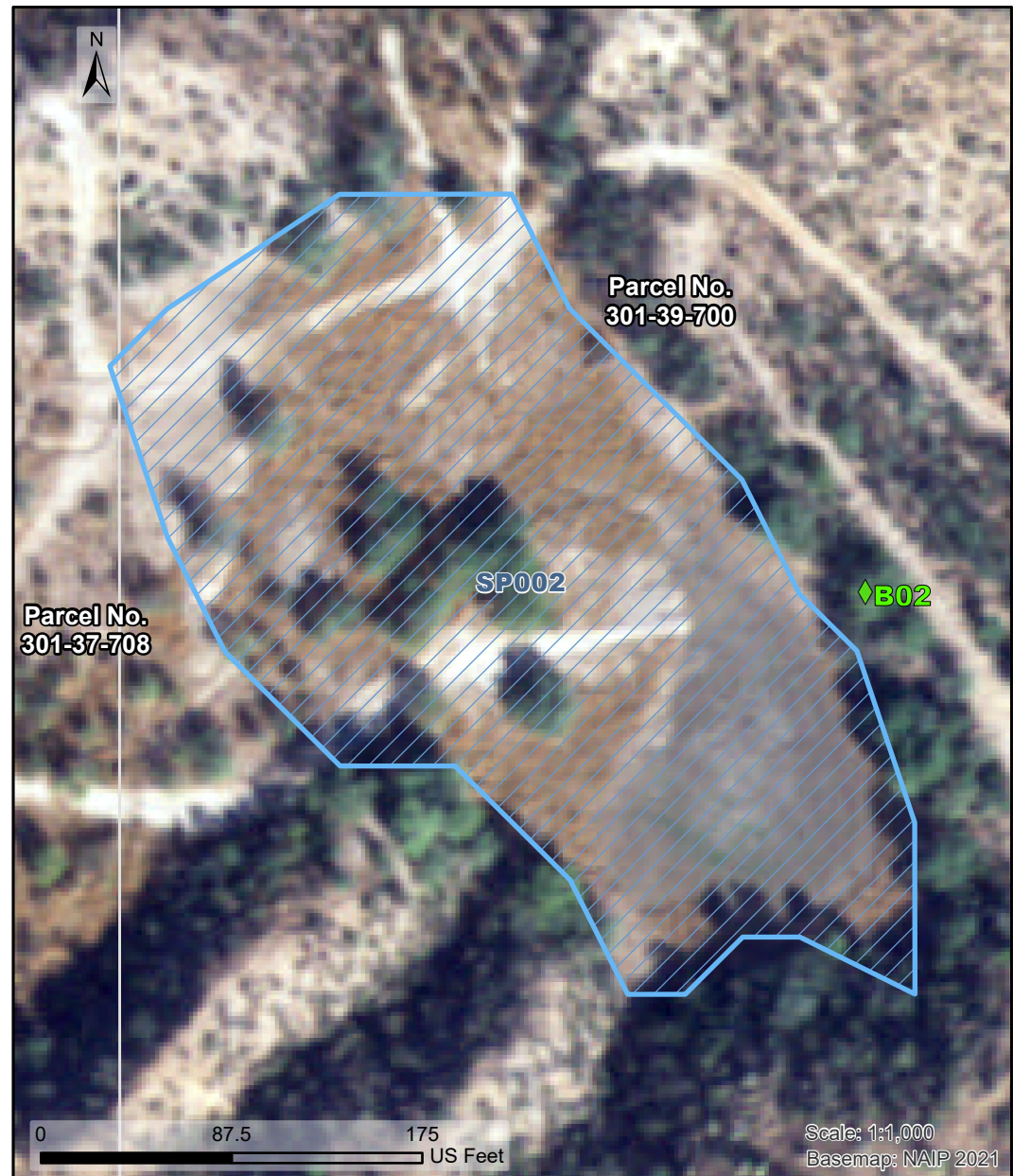


PROPOSED ABSTRACT OF POTENTIAL WATER RIGHT

1. Proposed Water Right	114-03-005-SP002
2. Owner of Right	Arizona State Land Department
3. Landowner	Arizona State Land Department
4. Statement of Claimant	39-6813
5. Lessee or Permittee	Arizona Game and Fish Commission
6. Basis of Right	3R-2019
7. Beneficial Use	Stockwatering from a small reservoir
8. Priority Date	June 7, 1960
9. Quantity	24.08 AF
10. Flow Rate	
11. Place of Use	SENENE19 07S 15E
12. Point of Diversion	B02 (SWNWNW19 07S 15E)
13. Source of Water	Cowhead Wash
14. Facility Name	Cowhead Tank; aka Four Corners Tank

Additional Information:

None



Beneficial Use

 Small Reservoir

Point of Diversion

 Berm/Dam

114-03-005-SP002

San Pedro River Watershed

Winkelman Subwatershed



ADWR August 2023