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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTIES OF MARICOPA AND APACHE**
12

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 **IN RE THE GENERAL ADJUDICATION**
23 **OF ALL RIGHTS TO USE WATER IN**
24 **THE LITTLE COLORADO RIVER**
25 **SYSTEM AND SOURCE**

26 AND
Contested Case No. CV6417

AND
Contested Case No. W1-11-1511

**ARIZONA DEPARTMENT OF
WATER RESOURCES' COMMENTS
ON ISSUES OF BROAD LEGAL
IMPORTANCE**

Honorable Scott Blaney
Special Master Sherri Zendri

27 **CONTESTED CASE NAME:** *In re ASLD – Fred & Carol Telles*

28 **HSR INVOLVED:** None.
29
30

1 **DESCRIPTIVE SUMMARY:** The Arizona Department of Water Resources (“ADWR”) provides comments to the issues of broad legal importance as designated in the Court’s
2 Notice of Designation of Issues of Broad Legal Importance filed on March 28, 2025, and
3 clarified in the Revised Notice of Designation of Issues of Broad Legal Importance filed on
4 May 19, 2025.

5 **NUMBER OF PAGES:** Nine, and a one-page attachment

6 **DATE OF FILING:** June 30, 2025

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8 **I. Background**

9 On March 28, 2025 the Court filed a Notice of Designation of Issues of Broad Legal
10 Importance (“Notice of Designation”) as raised in Contested Case No. W1-11-1511
11 because, among other reasons, “[a] certification requirement for stockponds would impact
12 numerous contested cases throughout the Little Colorado River and Gila River Basins,
13 including cases that have already been settled or decided.”¹ Pursuant to the Notice of
14 Designation, parties were invited to brief the following designated issues:

- 15 1) At minimum, what must a claimant asserting a *de minimis* stockpond right pursuant
16 to the Stockpond Registration Act, A.R.S. §§ 45-271 through -276 (“SPRA”), show
17 to prove the existence of a basis of right?
- 18 a) Under the SPRA, is a stockpond application under A.R.S. § 45-273 (“SPRA
19 Application”) a sufficient basis of right for a *de minimis* stockpond right or is
20 a stockpond certificate under A.R.S. § 45-275 (“SPRA Certificate”) necessary?
21
- 22 2) If certification is necessary, how can ADWR expedite the certification process?
- 23 3) If certification is necessary, how best should the Court address the abstracts
24 previously approved, despite the absence of a certificate?²

25

¹ [Notice of Designation](#) at 2.

26 ² *Supra* n. 1.

1 In response to the Notice of Designation, ADWR hereby submits its comments on the
2 designated issues.

3 **1) At minimum a claimant asserting a *de minimis* stockpond right pursuant to the**
4 **SPRA must prove that they have an active SPRA Application with ADWR. An**
5 **SPRA Certificate is not necessary.**

6 ADWR's position is that claimants asserting *de minimis* uses, including those in
7 stockponds, should not be subjected to the same standard of proof as claimants asserting
8 larger water uses. This position is based in law and an interest in a practical use of the
9 Court's and ADWR's time, and, as a result, a speedier outcome in both the Little Colorado
10 and Gila River Adjudications.

11 **A. Special Master Thorson's *De Minimis* Decision gives the Court**
12 **discretion for what may form a basis of right for a *de minimis* use and**
13 **specifically allows for SPRA Applications to satisfy the basis of right**
14 **requirement for *de minimis* stockponds.**
15

16 In Special Master Thorson's Memorandum Decision, Findings of Fact, and Conclusions
17 of Law for Group 1 Cases, involving Stockwatering, Stockponds, and Domestic Uses, dated
18 November 14, 1994, amended February 23, 1995, and adopted and modified by the Superior
19 Court Judge on September 27, 2002, ("*De Minimis* Decision"), Special Master Thorson
20 wrote:

21 "A non-exclusive list of possible legal bases for these rights includes:

- 22 • Prior judicial decrees, *id.* § 45-257(B)(1);
 - 23 • Filings pursuant to the Water Rights Registration Act, *id.* §§ 45-181 to -190;
 - 24 • Filings pursuant to the Stockpond Registration Act, *id.* §§ 45-271 to -276;
- 25
26

- 1 • Certificates of water right issued under the Public Water Code, *id.* §§ 45-141 to
- 2 -167; and
- 3 • Notices of appropriation.”³

4 The SPRA, including the portion outlining the certification process, had been in place for
5 seventeen years at the time Special Master Thorson issued the *De Minimis* Decision.
6 Specifically, what is now enumerated as A.R.S. § 45-275 was enacted by the 33rd
7 Legislature, 1st Regular Session as A.R.S. § 45-405.⁴ The language of this statute has not
8 been substantively altered since that time.⁵ Additionally, when looking at the “non-
9 exclusive list” of possible bases of rights it is important to note the use of the word
10 “certificate” in the third bullet point (rather than application) and the use of “filings” in the
11 second bullet point. Given that the certification process for stockponds had already been in
12 existence for over a decade and the requirement in A.R.S. § 45-273 for a separate claim to
13 be “filed” for each stockpond, it follows that Special Master Thorson’s word choice
14 mirroring the language of the statute is both intentional and significant.

15 Furthermore, the plain language of the *De Minimis* Decision favors an interpretation that
16 an SPRA Application is sufficient to form a basis of right for a *de minimis* stockpond.
17 Indeed, ADWR commonly uses the term “filing” synonymously with “application”. This is
18 demonstrated throughout ADWR’s website, where “filing” or “applying” are used
19 interchangeably and to differentiate between an action taken by a customer versus an action
20 or decision made by the Department.⁶ This terminology is also used in the SPRA itself,

21 _____
22 ³ [De Minimis Decision](#) at 41-42.

23 ⁴ The law as enacted is available to view through the Arizona Memory Project’s website at
<https://bit.ly/4kRKBzn>; see Senate Bill 1019, Laws 1977 ch. 69 at 225 (PDF p.267).

24 ⁵ Non-substantive changes have occurred since enactment to appropriately alter the
25 language following the creation of ADWR. See Attachment A comparing the law as enacted
in 1977 with the current version.

26 ⁶ See e.g. Use of the word “file” throughout the Claim of Water Right for a Stockpond and
Application for Certification on pp. 2, 3, “[Filing Annual Reports](#)” (required for holders of

1 where A.R.S. § 45-273 specifies that: (1) “A claim of water right for a stockpond . . . shall
2 be . . . filed in duplicate”; (2) the Department return “[a] claim which does not contain . . .
3 the required filing fee”; and (3) “A separate claim shall be filed for each stockpond”. All
4 actions related to filing are the burden of the water user - while ADWR bears the burden of
5 certification.

6 **B. It is an impractical use of the Court’s and ADWR’s time to require**
7 **all SPRA Applications be certificated to form a basis of right for even**
8 ***de minimis* uses.**

9 The purpose of *de minimis* proceedings is to save the time of the Court and the Parties
10 for water uses that are so small that the cost of litigation outweighs the benefits of
11 specifically determining a water right’s attributes. This understanding is supported by the
12 Office of the Special Master’s November 1993 publication of the General Stream
13 Adjudication Bulletin, where the Court answered the question: “What is meant by ‘*de*
14 *minimis*’ as it is applied to Arizona’s general stream adjudication?” After explaining the
15 differing points of view regarding the *de minimis* proceedings and uses, the Court writes
16 that “[t]he promise of applying the *de minimis* concept lies in handling small water users
17 collectively rather than on an individual basis. It could streamline otherwise lengthy court
18 proceedings and allow the adjudication to reach a more rapid conclusion.”⁷ If the Court
19 requires the certification of every SPRA Application prior to the issuance of a *de minimis*
20 right, the promise of speeding up the Adjudication by applying the *de minimis* concept
21 vanishes.

22 _____
23 several types of Grandfathered Rights and Permits, as an obligation of the right holder), use
24 of the phrase “filing fee” in relation to forms and applications within the [Wells and](#)
25 [Permitting division](#), and use of the phrase “filing fee” in relation to filing a [Statement of](#)
26 [Claimant](#).

⁷ Arizona General Stream Adjudication Bulletin, November 1993, at 5. Available to view
at: <http://bit.ly/3ZZxPWW>.

1 Additionally, ADWR has been unable to certificate over 16,000 stockponds statewide.⁸
 2 There are multiple reasons for this, including that ADWR inherited many uncertificated
 3 SPRA Applications from its predecessor, there are duplicate filings by landowners on
 4 lessee, and there are unresponsive applicants. Broken down by watershed, the number of
 5 uncertificated stockponds is as illustrated below:

Watershed	Number of Uncertificated Stockponds
Agua Fria River	790
Bill Williams River	506
Colorado River	1,075
Litle Colorado River	3,453
Lower Gila River	629
Rio Yaqui	117
Salt River	185
San Pedro River	1,846
San Simon River	14
Santa Cruz River	2,137
Upper Gila River	3,275
Verde River	1,564
Virgin River	203
White Water Draw	225
Wilcox Playa	266

17 Pursuant to the Arizona Administrative Code ADWR has a total licensing time frame of
 18 220 days to issuing a stockpond certificate.⁹ If ADWR availed itself of the full licensing
 19 time frame to certificate each stockpond, it would take at least 13,780 working years to
 20 certificate all the stockponds currently listed as active in the database.¹⁰ Simply put, the
 21

22 ⁸ As of May 8, 2025 there were 16,286 uncertificated stockponds with “Active” status
 23 within ADWR’s Surface Water Filings Database.

24 ⁹ [A.A.C. R12-15-401](#).

25 ¹⁰ Based on a 260-day working year, and assuming all SPRA Applications had no
 26 correspondence with the applicant that would result in a suspension of the licensing time
 frame. ADWR, of course, works on processing more than one SPRA Application at a time,
 but that fact alone does not diminish the burden of processing this many filings.

1 administrative and time-intensive burden that would be created by requiring certification
2 for *de minimis* stockponds eliminates any benefits the *de minimis* adjudication process
3 promises.

4 **2) There is no lawful way for ADWR to guarantee it can expedite the certification**
5 **process even if the Court determines that an SPRA Certificate is needed for *de***
6 ***minimis* stockponds.**

7 As outlined above, ADWR has a total licensing time frame of 220 days for issuing a
8 stockpond certificate. While ADWR would certainly continue its efforts to meet or beat the
9 licensing time frame allowances in the certification process, it cannot guarantee it will be
10 able to do so. Article III of the Constitution of the State of Arizona establishes “the
11 legislative, the executive, and the judicial” departments and requires that, “except as
12 provided in this constitution, such departments shall be separate and distinct, and no one of
13 such departments shall exercise the powers properly belonging to either of the other
14 others.”¹¹ While A.R.S. § 45-256 creates a statutory relationship between ADWR and the
15 Court, it is exclusively related to its technical work prepared for the Court and does not
16 create a relationship between ADWR’s permitting authority and the Court. Thus, ADWR’s
17 stockpond certification process must run independently from the Court, including how that
18 certification process is administered.

19 **3) If the Court determines that an SPRA Certificate is necessary, ADWR must**
20 **follow its certification procedures for all 173 stockponds in abstracts previously**
21 **approved by the Court despite the absence of a certificate.**

22 ADWR can accept the Court’s approved abstracts, with SPRA Applications listed as the
23 basis of right, for the purposes of administration of water rights pursuant to A.R.S. § 45-
24 257(B)(3). However, if the Court determines certificates are necessary, ADWR must follow
25

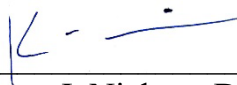
26 ¹¹ [Ariz. Const. art. III.](#)

1 its full administrative procedure prior to certificating a stockpond out of fairness to past and
2 future SPRA applicants and to comply with the regulations set for ADWR within the SPRA
3 itself.

4 Specifically, statute requires ADWR follow certain steps upon receipt of a claim. These
5 steps require: (1) “the director to conduct such investigation as in the director’s judgment
6 is necessary to certify the water right . . . [which] may include an inspection of the
7 stockpond”¹²; (2) ADWR to “issue and deliver a notice of each claim to water users who .
8 . . might be affected by the use of water as set forth in the claim”¹³; (3) ADWR to receive
9 protests from “any person affected” by the water use as set forth in the claim¹⁴; and (4) for
10 an administrative hearing to be held if requested by the claimant or protesting party or on
11 motion by the Director “to determine any material fact which is in dispute”¹⁵. The Director
12 has determined that an in-person inspection is necessary prior to a certification of a
13 stockpond, and ADWR must fulfill its statutory duties prior to issuing an SPRA Certificate
14 – even if the abstract has already been accepted by the Court. After investigation, ADWR
15 will either issue an SPRA Certificate or deny certificating the stockpond and will notify the
16 claimant, Court, and Court-Approved Mailing List of its findings and decision.

17 **DATED** this 30th day of June, 2025.

18 ARIZONA DEPARTMENT OF WATER
19 RESOURCES

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21 _____
22 Karen J. Nielsen, Deputy Counsel
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24 _____
25 ¹² A.R.S. § 45-275(A).

26 ¹³ A.R.S. § 45-274(A).

¹⁴ A.R.S. § 45-274(B).

¹⁵ A.R.S. § 45-275(B).

1 **ORIGINAL** of the foregoing and attachment
2 sent by first-class mail on June 30, 2025, to:

3 Clerk of the Maricopa Superior Court
4 Attn: Water Case
5 601 W. Jackson Street
6 Phoenix, Arizona 85003

7 Clerk of Apache County Superior Court
8 70 West Third South
9 St. Johns, Arizona 85936

10 **COPIES** of the foregoing
11 sent by first-class mail on June 30, 2025, to:

12 Judge Blaney
13 Maricopa County Superior Court
14 East Court Building
15 101 West Jefferson Street, Suite 411
16 Phoenix, Arizona 85003

17 **COPIES** of the foregoing
18 sent by electronic mail on June 30, 2025, to:

19 Special Master Sherri Zendri
20 water@jbazmc.maricopa.gov

21 **COPIES** of the foregoing Comments
22 sent by first-class mail on June 30, 2025, to all
23 parties on the court-approved mailing lists for
24 Contested Case No. W1-W4, CV6417, and W1-11-1511.
25

26 

ATTACHMENT A

Attachment A

Table Comparing Historical and Current Statute
Describing Stockpond Certification Process

A.R.S. § 45-405 (1977)	A.R.S. § 45-275 (2024)
<p>45-405. Investigation, hearing, and certification of claims.</p> <p>A. Upon receipt of a claim, the Department shall conduct such investigation as in its judgment is necessary to certify the water right. Such investigation may include an inspection of the stockpond.</p> <p>B. When requested by a claimant or the protesting party, the Department shall hold a hearing to determine any material fact which is in dispute. A hearing may be held on the Department's own motion.</p> <p>C. The Department shall issue a certification of the water right if it appears that the material facts stated in the claim are true and entitle the claimant to a water right for the stockpond. The water right shall be subject to all prior rights and the certification shall so state.</p>	<p>45-275. Investigation, hearing and certification of claims.</p> <p>A. Upon receipt of a claim, the director shall conduct such investigation as in the director's judgment is necessary to certify the water right. Such investigation may include an inspection of the stockpond.</p> <p>B. When requested by a claimant or the protesting party, an administrative hearing shall be held to determine any material fact which is in dispute. A hearing may be held on the director's own motion.</p> <p>C. The director shall issue a certification of the water right if it appears that the material facts stated in the claim are true and entitle the claimant to a water right for the stockpond. The water right shall be subject to all prior rights, and the certification shall so state.</p> <p>D. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.</p>