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MEMORANDUM

TO: TONY
SUBJECT: Michael J. and Susan S. Cavender Water Rights & Adjudication Claims
DATE: August 7, 2008 (update to memo of February 28, 2008)

General Overview

There are three known irrigation wells and one domestic well serving the Cavenders' property. One of the irrigation wells has been capped for some time and is not in use. There are two stockponds that are not a part of the Cavenders' property. When they were part of the Whiting Ranch, they were supplied by our two active irrigation wells, which were also located on the Whiting Ranch.

One of the issues that we are correcting concerns ADWR's question as to whether the Cavenders' well were actively used for irrigation during the years 2000 through 2005 so that they can be catalogued as active wells within with the "Gila River Maintenance Area," ADWR has questioned whether the wells were actively used during the period 2000 through 2005.

We were told that there was a statement of claimant (39-2140) that is relevant to the Cavenders' irrigation use and were given a partial copy of the claim. I pulled ADWR's complete record from their imaged database. I also conducted searches of the surface water, well registration and statement of claimant databases and found the domestic well. We decided to file a statement of claimant on that, too, if necessary. It looks like the Cavenders filed an adjudication claim for their domestic well, but it should probably be amended.

Analysis of the Irrigation Wells and Claims

There are three registered wells. For ease of reference, I have identified them as Well No. 1, Well No. 2 and Well No. 3, respectively:

Well No. 1 – 55-613295
Well No. 2 – 55-613296
Well No. 3 – 55-613297

These three wells were claimed in the adjudication under 39-2140, which consisted of three components of the old State Land Department forms. Each component of 39-2140 tied into one of the three wells, per the analysis below.

ANALYSIS OF WELL NO. 1

Well No. 1 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BDB (1 of 3 components)	NON-EXEMPT LATE WELL REGISTRATION 55-613295 D (7-20) 21 BDB	COMMENTS
Date of Filing	December 28, 1979	June 10, 1982	
Current Claimant / Registrant	Susan S. Cavender Michael J. Cavender	Whiting Ranches	
Chain of Title	1979 – Whiting Ranches 1994 – Kaibab Industries, Inc. 1996 – Cavenders	---	
Basis for Claim	Intent to Drill # D (7-20) 21 BDB	Registration of an existing well	
Claimed Priority Date	December 31, 1959	Well completed December 31, 1959	
Source	All three wells ~~~ Direct Source described as Aravaipa Creek, POD = SE NW Section 21 T7S R20E POU = As shown on map, Sections 7/8 T7S R20E	---	There's an implied surface water claim, but there are no documents to support this claim other than possible historic use and homestead patents. We probably should not tie the groundwater wells into Aravaipa Creek.
Primary Use	Irrigation	Irrigation	
Secondary Use	---	---	
Point of Diversion	NW SE NW Section 21 T7 S R20E ("Direct" source of Aravaipa Creek: SE NW Section 21)	NW SE NW Section 21 T7S R20E	
Place(s) of Use	For all 3 wells: 60 acres – N ½ Section 17 100 acres – SE Section 17 10 acres – NE Section 20 30 acres – NW Section 21 All T7S R20E 200 acres – Total 30 reclaimed acres	NW SE NW Section 21 T7S R20E	Not sure what the reclaimed land means in the statement of claimant.
Well Characteristics	Depth – 150 feet Casing Depth – 132 feet Casing Diameter – 16 inches Depth to Water – 20 feet Pump Capacity: 1000 gpm Completed: 12-31-1959	Depth – 762 feet Casing Depth – 762 feet Casing Diameter – 16 inches Depth to Water – 27 feet Pump Cap: 1400-1445 gpm Completed: 12-31-1959	It looks like the well characteristics in this statement of claimant got partially switched with the characteristics of Well No. 2 (discussed below).

Well No. 1 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BDB (1 of 3 components)	NON-EXEMPT LATE WELL REGISTRATION 55-613295 D (7-20) 21 BDB	COMMENTS
Means of Diversion	<p>All 3 wells are commingled and used for both the sprinkler system and flood irrigation.</p> <p>70 acres – sprinkler system 130 acres – flood irrigation</p> <p><u>Canal System</u> – Construction – Began in 1950; Completed 10-01-1951 Total Length – 5200 feet Length to 1st Place of Use: 30 feet</p> <p><u>Pipeline</u> – PVC, 12 inches diameter Total Length – 3800 feet Length to 1st Place of Use: 300 feet</p>	---	Is this diversionary system still in place? It looks like it is different now.
Claimed Volume	<p>3 wells – 200 irrigated acres</p> <p>300 AFA</p> <p>May 15 – September 30 each year</p> <p>Irrigation of hay and pasture</p>	<p>0 irrigated acres</p> <p>The well is “currently sealed”</p>	Are there plans to put this well back into use? Presumably, we can because of the maintenance area...
Other	<p>“Claimant contends that the water rights which are the subject matter of this filing are private and as such belong to the fee owner of the real property and are not subject to the adjudication. However, in the event these waters shall ever be deemed to be public waters, Claimant makes claim to said water rights as contained herein.”</p> <p>----</p> <p>There’s a map attached that might be helpful.</p>	---	See comments regarding proposed documents/drafts.

ANALYSIS OF WELL NO. 2

Well No. 2 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BDA (1 of 3 components)	NON-EXEMPT LATE WELL REGISTRATION 55-613296 D (7-20) 21 BDA	COMMENTS
Date of Filing	December 28, 1979	June 10, 1982	
Current Claimant / Registrant	Susan S. Cavender Michael J. Cavender	Susan S. Cavender Michael J. Cavender	
Chain of Title	1979 – Whiting Ranches 1994 – Kaibab Industries, Inc. 1996 – Cavenders	1982 – Whiting Ranches 1989 – Withrow Ranch Incorporated 1993 – James C. and Marie D. Withrow 1994 – Kaibab Industries, Inc. 1996 - Cavenders	
Basis for Claim	Intent to Drill # D (7-20) 21 BDA	Registration of an existing well	
Claimed Priority Date	February 1, 1960 (initiation of right); March 1, 1960 (first beneficially used)	Well completed March 1, 1960	
Source	All three wells ~~~ Direct Source described as Aravaipa Creek, POD = SE NW Section 21 T7S R20E POU = As shown on map, Sections 7/8/21 T7S R20E	---	There's an implied surface water claim, but there are no documents to support this claim other than possible historic use and homestead patents. We probably should not tie the groundwater wells into Aravaipa Creek, at least for irrigation purposes.
Primary Use	Irrigation	Irrigation	
Secondary Use	---	---	
Point of Diversion	NW SE NW Section 21 T7S R20E ("Direct" source of Aravaipa Creek: SE NW Section 21)	NE SE NW Section 21 T7S R20E	The point of diversion in the statement of claimant should be corrected to NE SE NW Section 21.
Place(s) of Use	For all 3 wells: 60 acres – N ½ Section 17 100 acres – SE Section 17 10 acres – NE Section 20 30 acres – NW Section 21 All T7S R20E _____ Total 200 acres – Total 30 reclaimed acres	SW Section 17 NW Section 17 NW Section 21 All T7S R20E	Not sure what the reclaimed land means in the statement of claimant. The SW quadrant of Section 17 listed in the well registration as a place of use is not listed as a place of use in 39-2140.

Well No. 2 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BDA (1 of 3 components)	NON-EXEMPT LATE WELL REGISTRATION 55-613296 D (7-20) 21 BDA	COMMENTS
Well Characteristics	Depth – 762 feet Casing Depth – 762 feet Casing Diameter – 16 inches Depth to Water – 20 feet Pump Capacity: not stated Completed: 03-01-1960	Depth – 152 feet Casing Depth – 132 feet Casing Diameter – 16 inches Depth to Water – 51 feet Pump Cap: 1200-1225 gpm Completed: 03-01-1960	It looks like the well characteristics in this statement of claimant got partially switched with the characteristics of Well No. 1 (discussed above).
Means of Diversion	All 3 wells are commingled and used for both the sprinkler system and flood irrigation. 70 acres – sprinkler system 130 acres – flood irrigation <u>Canal System</u> – Construction – Began in 1950; Completed 10-01-1951 Total Length – 5200 feet Length to 1 st Place of Use: 30 feet <u>Pipeline</u> – PVC, 12 inches diameter Total Length – 3800 feet Length to 1 st Place of Use: 300 feet	---	Is this diversionary system still in place? It looks like it is different now.
Claimed Volume	3 wells – 200 irrigated acres 200 AFA May 15 – September 30 each year Irrigation of hay and pasture	90 irrigated acres	

Well No. 2 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BDA (1 of 3 components)	NON-EXEMPT LATE WELL REGISTRATION 55-613296 D (7-20) 21 BDA	COMMENTS
Other	<p>“Claimant contends that the water rights which are the subject matter of this filing are private and as such belong to the fee owner of the real property and are not subject to the adjudication. However, in the event these waters shall ever be deemed to be public waters, Claimant makes claim to said water rights as contained herein.”</p> <p>-----</p> <p>There’s a map attached that might be helpful.</p>	---	

ANALYSIS OF WELL NO. 3

Well No. 3 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BBC (1 of 3 components)	STATEMENT OF CLAIMANT NO. 39-2148 SAN PEDRO WATERSHED Horse Pasture Tank	STATEMENT OF CLAIMANT NO. 39-2149 SAN PEDRO WATERSHED Tailwater Tank	NON-EXEMPT LATE WELL REGISTRATION 55-613297 D (7-20) 21 BBC	COMMENTS
Date of Filing	December 28, 1979	December 28, 1979	December 28, 1979	June 10, 1982	
Current Claimant / Registrant	Susan S. Cavender Michael J. Cavender	Kaibab Industries, Inc.	Kaibab Industries, Inc.	Susan S. Cavender Michael J. Cavender	
Chain of Title	1979 – Whiting Ranches 1994 – Kaibab Industries, Inc. 1996 – Cavenders	1979 – Whiting Ranches 1994 – Kaibab Industries, Inc. (supportive deeds provided)	1979 – Whiting Ranches 1994 – Kaibab Industries, Inc. (supportive deeds attached)	1982 – Whiting Ranches 1989 – Withrow Ranch Incorporated 1993 – James C. and Marie D. Withrow 1994 – Kaibab Industries, Inc. 1996 - Cavenders	

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Well No. 3 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BBC (1 of 3 components)	STATEMENT OF CLAIMANT NO. 39-2148 SAN PEDRO WATERSHED Horse Pasture Tank	STATEMENT OF CLAIMANT NO. 39-2149 SAN PEDRO WATERSHED Tailwater Tank	NON-EXEMPT LATE WELL REGISTRATION 55-613297 D (7-20) 21 BBC	COMMENTS
Basis for Claim	Intent to Drill # D (7-20) 21 BBC	38-72589 Irrigation Well D(7- 20) 21 BBC	38-72582 Irrigation Well D(7- 20) 21 BBC	Registration of an existing well	The wells that are listed in SOCs 39- 2148 and 2149 are listed as an additional source of water, not the primary source.
Claimed Priority Date	September 6, 1951 (initiation of right); October 15, 1951 (first beneficially used)	March 7, 1979 June 1, 1957	March 7, 1979 September 1, 1943	Well completed October 15, 1951	The 2 statements of claimant for stockponds give a 1979 date on the first page, but construction dates of 1957 and 1943, as noted.
Source	All three wells ~~~ Direct Source described as Aravaipa Creek, POD = NW NW Section 21, T7S R20E POU = As shown on map, Sections 7/8/21 T7S R20E	Ditch from irrigation well	Runoff water from irrigation fields	---	See comments about how this might be corrected.
Primary Use	Irrigation	Stockwater	Stockwater	Irrigation	
Secondary Use	---	---	---	---	
Point of Diversion	SW NW NW Section 21 T7S R20E ("Direct" source of Aravaipa Creek: NW NW Section 21)	Well: SW NW NW Section 21 T7S R20E Pond: SE NE Section 17 T7S R20E	Well: SW NW NW Section 21 T7S R20E Pond: NE NW Section 17 T7S R20E	SW NW NW Section 21 T7S R20E	See comments about how this might be corrected.
Place(s) of Use	For all 3 wells: *50 AC - N ½ S17 100 AC - SE S17 *10 AC - SW S8 30 AC - NW S21 10 AC - NE S20 200 acres - Total 30 reclaimed acres	Storage in pond at SE NE Section 17 T7S R20E	Storage in pond at NE NW Section 17 T7S R20E	SW Section 17 NW Section 17 NW Section 21 All T7S R20E	The acreage with an asterisk for 39-2140 are different from the acreage descriptions provided in the corresponding SOCs. The SW quadrant of Section 17 listed in the well registration as a place of use is not listed as a place of use in 39-2140.

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Well No. 3 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BBC (1 of 3 components)	STATEMENT OF CLAIMANT NO. 39-2148 SAN PEDRO WATERSHED Horse Pasture Tank	STATEMENT OF CLAIMANT NO. 39-2149 SAN PEDRO WATERSHED Tailwater Tank	NON-EXEMPT LATE WELL REGISTRATION 55-613297 D (7-20) 21 BBC	COMMENTS
Well Characteristics	Depth – 762 feet Casing Depth – 762 feet Casing Diameter – 16 inches Depth to Water – 20 feet Pump Capacity: not stated Completed: 03-01-1960			Depth – 152 feet Casing Depth – 132 feet Casing Diameter – 16 inches Depth to Water – 51 feet Pump Cap: 1200-1225 gpm Completed: 03-01-1960	It looks like the well characteristics in this statement of claimant got partially switched with the characteristics of Well No. 1 (discussed above).
Means of Diversion	All 3 wells are commingled and used for both the sprinkler system and flood irrigation. 70 acres – sprinkler system 130 acres – flood irrigation <u>Canal System</u> – Construction – Began in 1950; Completed 10-01-1951 Total Length – 5200 feet Length to 1 st Place of Use: 30 feet <u>Pipeline</u> – PVC, 12 inches diameter Total Length – 3800 feet Length to 1 st Place of Use: 300 feet			---	Is this diversionary system still in place? It looks like it is different now.
Claimed Volume	3 wells – 200 irrigated acres 200 AFA May 15 – September 30 each year Irrigation of hay and pasture			90 irrigated acres	

Well No. 3 Characteristics	STATEMENT OF CLAIMANT NO. 39-2140 SAN PEDRO WATERSHED D (7-20) 21 BBC (1 of 3 components)	STATEMENT OF CLAIMANT NO. 39-2148 SAN PEDRO WATERSHED Horse Pasture Tank	STATEMENT OF CLAIMANT NO. 39-2149 SAN PEDRO WATERSHED Tailwater Tank	NON-EXEMPT LATE WELL REGISTRATION 55-613297 D (7-20) 21 BBC	COMMENTS
Other	<p>“Claimant contends that the water rights which are the subject matter of this filing are private and as such belong to the fee owner of the real property and are not subject to the adjudication. However, in the event these waters shall ever be deemed to be public waters, Claimant makes claim to said water rights as contained herein.”</p> <p>----</p> <p>There’s a map attached that might be helpful.</p>			---	

General Observations regarding the 3 Components of 39-2140

- *Place(s) of Use* – The two active wells (55-613296 and 55-613297) list the SW quadrant of Section 17 as a place of use for irrigation. This quadrant does not appear in the statements of claimant. The statements of claimant indicate that there is a total of 200 irrigated acres. Only 110 of these acres correspond with the wells as currently registered:

100 acres – SE Section 17
10 acres – NE Section 20
 110 acres – All in T7S R20E

The active wells list 180 acres – 90 associated with 55-613296 and 90 acres associated with 55-613297. It is possible that these registrations intended that both wells were used to irrigate the same 90 acres so that there would be a total of 90 acres, not 180 acres. I am amending the well registrations to claim a higher irrigated acreage. Per the maps, it looks like approximately 203 acres are irrigated.

- *Irrigation Duty*. The statement of claimant states that 200 acres of land are irrigated for approximately 4.5 months with the following:

Well No. 1 300 AFA
 Well No. 2 200 AFA
 Well No. 3 200 AFA
 700 AFA (3.5 AFA per acre)

I adjusted this to 3.4 AFA per acre for the 203.67 acres that are shown on the map.

- Surface Water Claim. The statements of claimant all refer to Aravaipa Creek as a direct source of water. In each component of 39-2140, the point of diversion of this “direct source” corresponds with the location of the well. I could find no evidence to support a right to divert surface water from Aravaipa Creek, although I do think it could be tied into stockwatering.

Stockwatering Uses and Potential Problem Areas

The Cavenders’ Claim. So that we have a pre-1919 appropriation right to Aravaipa Creek, I referred to the Cavenders’ 30-50 head drinking directly from the creek. I am not sure that this is currently accurate, but wanted to establish a pre-statehood right to surface water. One of ADWR’s rural water reports suggests that ranching activities started in the late 1800s and that irrigation uses are presently supplied with groundwater. Direct link:

http://www.azwater.gov/dwr/Content/Find_by_Category/ABCs_of_Water/Rural_AZ/SoutheasternArizona/Aravaipa_Canyon_Basin.pdf

I also found references to early livestock brands that show that at least two of the original homesteaders associated with our property had registered brands by July, 1908. Although it’s a bit iffy, I decided to include this as historical evidence supporting our pre-1919 stockwatering claim because we have so little historic documentation. Some of the “articles” in the report are quite entertaining.

Other Properties. As you can see from the analysis of Well No. 3, there are two statements of claimant that refer to stockponds that were apparently supplied with the Cavenders’ groundwater. There are some discrepancies in the filings, but I think that these ponds are located in the triangle northwest of Klondyke Road that does not belong to the Cavenders. A more detailed summary is included in the attached compendium, but briefly:

Horse Pasture Pond	38-72589 Currently registered to the Holcomb Family Trust	39-2148 Currently claimed by Kaibab Industries, Inc.	Both filings refer to Irrigation Well D(7-20) 21 bbd (which is our 55-613297) as the source. A ditch connected the well with the stockpond.
Tailwater Pond	38-72582 Currently registered to Kaibab Industries, Inc.	39-2149 Currently registered to Kaibab Industries, Inc.	Both filings refer to irrigation tailwater as the source of water for this pond and provide information concerning 55-613297 to document the well as a source.

Since the Cavenders are not the registered stockpond owners or the claimants in 39-2148 and 39-2148, they cannot amend either claim. We could try partial assignments or sending ADWR letters to the file, but this could be time consuming and fruitless. I decided that it would be more efficient to amend the well registrations to specifically exclude Horse Pasture Tank and Tailwater Tank as being supplied with groundwater pumped from our wells.

Corrective and New Documents

The following have been drafted for your review. I've "enabled" the PDF forms so that they can be amended on the computer.

- Change in Well Ownership Form for Registered Well No. 55-613295 – This is the inactive well, but since it is located on the Cavenders' property, I drafted the change in well ownership form in case the well can be used in the future.
- Change in Well Information Form for Registered Well No. 55-613296 – This form attempts to clarify the amount of irrigated acres and the location of the pipelines. The Cavenders' stockwatering uses are added as a use and the Horse Pasture and Tailwater ponds are specifically excluded as uses.
- Change in Well Information Form for Registered Well No. 55-613297– This form attempts to clarify the amount of irrigated acres and the location of the pipelines. The Cavenders' stockwatering uses are added as a use and the Horse Pasture and Tailwater ponds are specifically excluded as uses.
- 36-Filing for Aravaipa Creek Water – This document claims stockwatering along Aravaipa Creek. As discussed above, it's an attempt to tie a pre-1919 appropriative right to the property.
- Amendment to Irrigation Use Statement of Claimant No. 39-2140 -- We need to take a close look at the language in the schedule, which attempts to clarify the location of irrigated acres, compliance with the Gila settlement and so forth.
- Amendment to Other Uses Statement of Claimant No. 39-2140 – Since the original filing was on the old ASLD form citing the exact same sources, it seemed to me that an amendment would work instead of having to file a new form. As discussed above, this form attempts to create a pre-1919 appropriate claim based on stockwatering uses.

The Domestic Well

The domestic well that was drilled in the mid-1990s (Registered Well No. 55-553455). The Cavenders claimed this well in Domestic Use Statement of Claimant No. 39-14912. I have enclosed an amendment to this statement of claimant in order to include language

concerning the typical groundwater disclaimers regarding the volume and claimed priority. Other issues include:

Source of Water – Aravaipa Creek is listed as a source. I am not sure that this is correct. I included language about when the property was homestead as an “if this is subflow” precaution. The statement of claimant currently does not list groundwater as a source.

Point of Diversion/Place of Use – The tax parcel number has changed. I usually don’t include these because they tend to change often.