

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/24/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

A. Hatfield

Deputy

In Re: San Pedro River Subflow Technical
Report, Case number W1-103

FILED: 08/05/2019

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: Status Conference

MINUTE ENTRY

Courtroom: CCB 301

1:30 p.m. This is the time set for a status conference before Special Master Susan Ward Harris.

The following attorneys and parties appear in-person: William Anger on behalf of Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale; Alexandra Arboleda on behalf of Cities of Flagstaff, Tempe, and Tombstone; David Brown on behalf of City of Cottonwood, and Gila Valley Irrigation District and Franklin Irrigation District; John Burnside on behalf of BHP Copper and Arizona Public Service; Carli Consoli on behalf of the AZ Chapter of the Nature Conservancy; Kevin Crestin on behalf of the Arizona State Land Department; Kimberly Ruht on behalf of Arizona Water Company; Mark McGinnis, Patrick Sigl, Sharon Norris and Jonathan Charlton on behalf of Salt River Project ("SRP"); Kimberly Parks, Jeff Trembly, Glen Buehner, and Edwin Corkhill on behalf of Arizona Department of Water Resources ("ADWR"); Charles Cahoy on behalf of City of Phoenix; Joe Sparks on behalf of San Carlos Apache Tribe and Tonto Apache Tribe, L. William Staudenmaier on behalf of Arizona Public Service; William Sullivan on behalf of Pueblo Del Sol Water Company and City of Sierra Vista; and Jenny Winkler on behalf of City of Chandler.

The following attorneys and parties appear telephonically: Sean Hood on behalf of Freeport Minerals Corporation; Susan Montgomery on behalf of Pascua Yaqui Tribe and Yavapai-Apache Nation; Thomas Murphy on behalf of Gila River Indian

Community, Yosef Negose on behalf of the United States Department of Justice; and Bradley Pew on behalf of ASARCO;

Court reporter, Lori Thielmann, is present and a record of these proceedings is made digitally.

The Court states that this immediate proceeding concerns the process for the development of the subflow depletion test. The Court recites the history of the proceedings noting that approximately two years ago ADWR presented its cone of depression test at which time there was a discussion about the order, development, and use of a cone of depression test and a subflow depletion test. The Court subsequently determined to hold a hearing on the cone of depression test and, based on that hearing, the initial subflow depletion test to be submitted by ADWR, and the parties' comments and objections to the initial subflow depletion test would define the process for the consideration of the subflow depletion test to be proposed by ADWR.

Mr. Murphy, Mr. Negosi, Ms. Parks, Mr. Staudenmaier, Mr. Sparks, Mr. Hood, Mr. Crestin, Mr. Sullivan, Mr. Brown, and Mr. McGinnis respond to the Court's questions and state their clients' positions with respect to the subflow depletion test.

Ms. Parks updates the Court regarding the meeting between the parties, their experts, and ADWR about the initial subflow depletion test. She states that ADWR filed its report a couple of weeks ago discussing the items that have been agreed to by all the parties that attended the meeting. All of the experts participated and shared information that was very helpful. Discussion is held regarding the MODFLOW model and timeline for the development of the subflow depletion test.

Edwin Corkhill, representative from ADWR, addresses the Court regarding the subflow depletion test and SRP's offer to submit a Demonstration Project. Mr. Corkhill estimated that it would take roughly three years to develop a MODFLOW model.

The Court questions whether the anticipated three-year time frame could be reduced if the area for the proposed model were limited to the Sierra Vista subwatershed. Mr. Corkhill stated that there would be a time savings if the model area were reduced, but believes that a more comprehensive model that does not have an artificial boundary would be a better type of model.

Mr. McGinnis states his proposal to move forward. SRP has proposed a demonstration project that was somewhat different than its position six months earlier. He further states that the four legal issues that ADWR listed in their report are essentially threshold issues that need to be addressed within the next year. The legal issues can be briefed and decided by the Court.

The Court states that in ADWR's report, there are three outstanding areas of disagreement: 1) Should depletion analysis include reduction of flow to the subflow zone? 2) What is the legal definition of the vertical extent of the subflow zone? 3) What projection period should be used to for future depletion analysis? The Court inquires if there is a fourth issue.

Mr. McGinnis says that the report says that if the model is to be used pre-decree, an additional question is do you use actual pumping or capacity of the well in the model. Further discussion is held.

Mr. Burnside, Mr. Sullivan, Mr. Murphy, Ms. Montgomery, Mr. Negosi, Mr. Hood, and Ms. Parks state their positions regarding SRP's proposal.

The Court inquires whether ADWR can prepare a schedule for the next three years to give the parties guidance about its anticipated process. Ms. Parks states that the three-year time period that ADWR has estimated would start after two groundwater modelers were hired. Ms. Parks further states that ADWR can attempt to craft a timeline of this process but it would be helpful if ADWR could begin the process and see how it is going and then ADWR could propose times that are appropriate for the parties to meet. ADWR could also take into consideration the results of the work outlined in SRP's proposal.

Mr. McGinnis encourages the adoption of deadlines and periodic meetings with ADWR. He also clarified that the results of its proposed project would not be filed with the court but would be instead distributed to ADWR and the parties for discussion purposes.

3:11 p.m. Matter concludes.

LATER

IT IS ORDERED that Salt River Project shall prepare a Demonstration Project as described in its proposal filed July 12, 2019. It shall distribute the Demonstration Project to ADWR and the parties included on the Court-approved mailing list for this case by **November 1, 2019**. The Demonstration Project shall not be filed with the Clerk of the Court or the Court. Arizona Department of Water Resources shall file a report by **December 6, 2019**, identifying its position with respect to the Demonstration Project, a status report with respect to its progress on the development of the subflow zone test and shall submit a proposed schedule for the continued development of the subflow depletion test for the period December 6, 2019 through March 31, 2020. The proposed schedule should include ADWR's position as to whether it would be productive to schedule a meeting of experts during the period ending March 31, 2020.

IT IS FURTHER ORDERED that the parties shall file their pleadings by **October 25, 2019** on the following issue:

1. Should depletion analysis include reduction in flow to the subflow zone as opposed to a depletion analysis based solely on reduction in flow from the subflow zone?
2. What is the legal definition of the vertical extent of the subflow zone?
3. What is the time component to be used in subflow depletion analysis? If the proposed time component will not determine the subflow depletion that has occurred or is occurring at the time of the test, what is the projection period and what is the purpose of determining future depletion that is not otherwise accomplished by the application of the cone of depression test?
4. For purposes of modelling subflow depletion to determine whether a well is depleting the subflow zone, should the amount of water pumped equal the amount actually pumped or should it equal the amount reported, if any, in a watershed file report or well report prepared by ADWR?

Responses are due on **November 13, 2019**, and replies shall be filed by **November 25, 2019**. Oral argument on the issues shall be held on **December 11, 2019** at **1:30 p.m.** in the Maricopa County Superior Court, Courtroom 301, Central Court Building, 201 West Jefferson, Phoenix, Arizona 85003.

Instructions for telephonic appearance:
Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)
Dial Participant Pass Code 357264#

IT IS FURTHER ORDERED that a status conference shall be held on **December 11, 2019** following oral argument. At the status conference, a proposed schedule shall be addressed for the period ending March 31, 2020. To the extent that the parties believe that there are legal issues ripe for briefing, the parties shall file a list of the proposed legal issues by **November 25, 2019**.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.