

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/22/2021

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

L. Stogsdill

Deputy

In re: Paul L. Sale Investment Co.
Contested Case No. W1-11-3107

FILED: 3/30/2021

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: Scheduling Conference

MINUTE ENTRY

Courtroom: CCB 301

3:00 p.m. This is the time set for a telephonic status conference before Special Master Susan Harris. The following parties appear telephonically:

Rhett Billingsley for ASARCO;
John Burnside for BHP Copper;
Mark McGinnis for SRP;
Joe Sparks and Lauren Hermann for the San Carlos Apache Tribe;
Kimberly Parks for the Arizona Department of Water Resources;
Richard Palmer for the Tonto Apache Tribe;
Sue Montgomery for the Yavapai Apache Tribe and observing for the Pascua Yaqui Tribe; and
Charles Cahoy for the City of Phoenix.

Court Reporter, Wendy Ricard is present and a record of the proceedings is made digitally.

Mr. McGinnis advises the Court of the current status of this matter. This matter involves the North tract of the property. The abstracts were sent out in October of 2019 and Disclosure Statements were completed in May of 2020. Mr. McGinnis states that SRP may be able to open offices in June so that additional documents can be obtained.

He also confirms that he has had discussions with ASARCO and BHP as their property is just upstream from SRP's property. Mr. McGinnis believes they are close to

knowing whether or not they will be able to reach a settlement in this matter. He requests that the parties be allowed to continue settlement discussions until ADWR issues its amended watershed file report in September 2021.

Mr. McGinnis states he would like to keep both the North and South portion of the property on the same schedule and he will continue to work toward a settlement. Mr. McGinnis further states that the issues and the witnesses will be much the same. He would like this case to be tried with the case involving the South tract.

Mr. Sparks agrees with the schedule discussed. He also he is concerned about the negotiations and reports that his clients have been approached without his knowledge or consent and discussions should be limited to counsel of record.

The Court does not believe there is a schedule in this matter other than the deadline for ADWR's amended watershed file report, which will be **September 10, 2021**. The Court further stated that upon receipt of the amended watershed file report, an objection deadline will be set and a status conference will be set.

There are no other comments offered at this time.

The Court asks the parties about the appropriate guideline to request ADWR to prepare an amended WFR when an amended statement of claims has been filed.

Mr. Burnside responds that first the issue is not just that an amended SOC has been filed. The issue is that there is a contested case and the amended SOC is filed in that case and the SOC reflects a significant change in the claim versus the original SOC such that parties may not be on notice that may have occurred between the WFR and the amended SOC. The amended WFR allows parties to make objections and the objectors the opportunity to amend any objections based on the changes made. BHP in the past has taken the position in the past that under most circumstances notice to the general W-1 through W-4 list as well as the list in the contested case is sufficient.

Mr. Sparks states that the test is when it is sufficiently material to possibly provoke an additional objection from parties who did not yet object to the previous WFR. He also states that he would like to review Supreme Court's decision in *Gila 1* because he recollects that there was a short discussion in the case about what would be adequate notice in the future for objecting or interested parties and the court approved mailing list. The test is pretty subjective.

Ms. Montgomery answered the question about notice that it is a matter degree - significant change in quantity or priority date. Mr. Cahoy offer his opinion that a new watershed file report is required is based on materiality based on the elements of the water right and the degree to which a change in one of the elements of the water right could impact another water right user. In that case, all the parties in the adjudication would have the opportunity to examine the WFR. If an element of a water right could impact another water user that is not a party then consideration should be given to broader notice.

Further discussion is held.

Mr. McGinnis' position, from a constitutional perspective, is that a new notice of an amended WFR is never required because of the Court approved mailing list, the docket and the objections process to the catalog.

The Court will draft a schedule in this matter.

3:24 p.m. Matter concludes.

LATER:

Objections to amended Watershed File Report 114-01-CCD-012 due **November 9, 2021**.

Telephonic Status Conference - November **19, 2021 at 1:30 p.m.**

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

A copy of this minute entry is mailed to all individuals on the Court approved mailing list for W-1-11-3107.