

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/19/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

T. DeRaddo
Deputy

In re: Joel William Rubin
Contested Case No. W1-11-3324

FILED: 03/26/2021

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: Status Conference

MINUTE ENTRY

Central Court Building – Courtroom 301

1:30 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris. Appearances are as follows: Sandra T. Knox on behalf of Joel William Rubin and on behalf of Kelly Glen. Mark McGinnis on behalf of SRP; Laurel Herrmann on behalf of the San Carlos Apache Tribe; John Burnside on behalf of BHP Copper; Kimberly Parks on behalf of ADWR; and Brad Pew on behalf of ASARCO.

Discussion is held regarding Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association's Request for Status Conference ("SRP"). Mr. McGinnis states that the trial date is approaching, but very little discovery has been completed. Mr. McGinnis requests that the Court proceed by using the *de minimis* process for this case and requests that any remaining issues for trial be clarified, if there is to be a trial.

The Court notes that when reviewing the disclosure statements, the Tonto Apache Tribe objected that neither Sandra T. Knox, Joel W. Rubin nor Kelly Glen had filed Statements of Claimant. The Court states that Mr. Glenn and Ms. Knox filed a Statement of Claimant, dated in 2019 (No. 39-18038). Mr. Ruben also filed a Statement of Claimant. The Court has not seen a Statement of Claim of Right to Use Public Water of the State (a "Form 36") and believes that the parties may be relying on the filing 10-1104274.12 located

by ADWR and included in the watershed file report 115-04-ADC-006 (the “10 filing”). With the exception of SRP and perhaps BHP Copper, the 10 filing may not be acceptable to the other parties.

In reviewing the filed documents, the Court notes that there is a document from the Department of the Interior discussing a pre-1919 water use. The documents were submitted by the San Carlos Apache Tribe. Laurel Herrmann states that she has found a patent and an Indian Allotment for the property. The Application for Allotment dates back to 1911. So, does not support a date prior to 1911.

Discussion is held regarding whether the claimants, Knox, Rubin and Glen, should file a Form 36 with the Arizona Department of Water Resources. Ms. Herrmann states that she is not opposed to the Claimants filing a Form 36; and further states that as long as the abstract is clear regarding the basis of the date, the San Carlos Apache Tribe would be agreeable.

The Court asks whether the Abstract should include the Department of the Interior General Land Office Report. Ms. Herrmann reports that the Indian Affidavit is dated March, 11, 1911, and is attached to a March 4, 1911 Indian Allotment Application.

Ms. Herrmann states that she would like to see a map that shows the location of the residence, and is not sure if a map was attached to the most recent Abstract. Ms. Herrmann further states the claims should be for a 1-acre foot of water as opposed to the 1.5 acre feet, and there should be a map that shows the location of the residence with a GPS coordinates.

To clarify, Ms. Herrmann requires the following: (1) that the 1911 priority date be established; (2) to have the basis of right be clarified; (3) a claim based on the 1-acre foot instead of the 1.5 acre feet, and (4) a clear map with the GPS coordinates of the residences. She believes that Mrs. Knox and Mr. Rubin are each seeking a 1-acre foot.

Sandra T. Knox states that the 1911 priority date is acceptable to her. Mrs. Knox states that she has a well on her property and is claiming a 1-acre foot water right for her property. Mrs. Knox reports that Mr. Rubin has two residences on his property and is not certain whether Mr. Rubin is requesting a 1-acre foot for each of the two residences or one acre-foot for the entire property.

Mrs. Knox requests that the *de minimis* process be used in establishing the water rights. Further discussion about quantity of water claimed by Mr. Rubin.

John Burnside states that he is willing to settle this case as long as the other parties are also willing to settle the case. Mr. Burnside states that the terms established today are acceptable to BHP Copper.

Mr. Pew states that the terms established today are acceptable to ASARCO.

Mr. McGinnis states that the terms established today are acceptable to SRP, but requests that Mrs. Knox and Mr. Rubin each file a Form 36 based upon the patent. The abstract should include the number assigned by ADWR from the Form 36 as the Basis of Right in the Abstract.

Mr. McGinnis notes that the 55 well registration numbers on both of the Abstracts (Knox and Rubin) are the same as the point of diversion section. Mr. McGinnis believes that the well registration number is for Mrs. Knox's well. If Mr. Rubin has a separate well, the well registration number should be included in the Abstract as the point of diversion for his property. Mr. McGinnis approves the 1911 priority date.

Ms. Parks states that she will send Mrs. Knox a Form 36 for her to fill out and to file with ADWR.

Mrs. Knox believes that ADWR prepared an aerial map of the properties. Mr. McGinnis states that he has a map for Mrs. Knox's property, dated August 26, 2019; and states that the disclosure statement that Mrs. Knox filed in October, 2020, had two maps attached. In the map dated August, 2019, in Section 4, there are two white boxes. Mrs. Knox confirms that Mr. Rubin's property is to the north and Mrs. Knox's property is to the south. The aerial maps indicate the location of the residences.

Discussion is held regarding Mrs. Knox's disclosure statement. Ms. Knox states that she has a map with the coordinates of the well. Ms. Herrmann believes that Mr. Sparks requested that a map be submitted with the GPS coordinates of the residence because the claim will be for residential use water rights. Ms. Parks states that her map shows both wells (the symbols for the wells are different from one another). The map was created after the Claimants' and Objectors' meeting. Mr. McGinnis believes that there were two maps created in August 2019. One was filed with a meeting report the ADWR had on August 27, 2019 (this map has both wells indicated); another map was included with a Notice of Filing Map on August 16, 2019. Ms. Herrmann states that she has the maps to which Mr. McGinnis refers, and they have the GPS coordinates of the wells.

IT IS ORDERED Mrs. Knox shall prepare and file a Form 36 with ADWR.

IT IS FURTHER ORDERED Mr. Rubin shall prepare and file a Form 36 with ADWR.

IT IS FURTHER ORDERED Mrs. Knox shall send the GPS coordinates of her residence to Ms. Parks at ADWR and to Mr. McGinnis.

Ms. Parks states that after the Mr. Rubin and Mrs. Knox have submitted their Form 36 documents, they should become a matter of public record within 30 days.

Ms. Herrmann states that she has found a document that indicates that Mr. Rubin has a claim for 2-acre feet, one acre-foot for each of his two residences. Ms. Herrmann

states that The Apache Tonto Tribe is amenable to Mr. Rubin's claim for two-acre feet for his two properties.

Ms. Herrmann, Mr. Burnside, Mr. Pew, Mr. McGinnis and Mrs. Knox each stipulate on the record that they are amenable to allowing one-acre foot for each of the three residences. The parties agree to withdraw any objections based on the agreements discussed on the record. The parties agree to settle the claims.

Mr. McGinnis states that he will prepare the abstracts and prepare the stipulation and circulate them to the parties and submit them to the Court.

For the reasons stated on the record,

IT IS ORDERED vacating the Trial set to begin on April 5, 2021.

The Court advises Mrs. Knox that before she files the Form 36's with ADWR, she should submit them to the parties including Mr. McGinnis and Ms. Herrmann insure that all of the required information is included in her filing.

2:01 Matter concludes.

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