

SUPERIOR COURT OF ARIZONA
APACHE COUNTY
MARICOPA COUNTY

7/17/2007

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Tomlinson
DEPUTY

W-1, W-2, W-3, W-4 (Consolidated)

COPY

CV-6417

FILED August 12, 2008

In Re the General Adjudication
Of All Rights to Use Water in
The Gila River System and Source

In Re Arizona Department of Water
Resources' Progress Report
Concerning Adjudication Work

MINUTE ENTRY

Courtroom 112 – Northeast Regional Court Center

2:32 p.m. This is the time set for a Joint Progress Hearing Concerning the Arizona Department of Water Resources' Adjudication Work. Present are: Scott M. Deeny and Richard T. Burtell for the Arizona Department of Water Resources ("ADWR"); John L. Gaudio for the U.S. Department of the Interior; Colin Cloud Hampson for the Hopi Tribe; Patrick B. Sigl for Arizona State Agencies and the Attorney General's Office; Lee Storey and Mary G. Davidson for the City of Flagstaff and Rio Rico Properties; Maxine M. Becker, M. Byron Lewis and Mark A. McGinnis for the Salt River Project; Gregory L. Adams for ASARCO LLC, Arizona Water Company, and Catalyst Paper (Snowflake) Inc.; William P. Sullivan for Bella Vista Water Company, Inc., Pueblo Del Sol Water Company, and the City of Sierra Vista; David A. Brown for various claimants in both adjudications; Cynthia M. Chandley for Freeport-McMoRan Copper and Gold Company; L. William Staudenmaier for Arizona Public Service and Roosevelt Water Conservation District; Jenny J. Pelton for Arizona Public Service, Roosevelt Water Conservation District, and Freeport-McMoRan; Cynthia J. Haglin for the City of Chandler; M.

James Callahan for the City of Phoenix; and Sally A. Worthington for Maricopa County. Unannounced parties and counsel appear telephonically.

Barbara K. Brown, assistant to Special Master George A. Schade, Jr., is present.

Court reporter, Melody O'Donnell, is present.

Mr. Deeny states that the total number of ADWR dedicated adjudication personnel is approximately 15, and the current budget will have no adverse affect on the adjudications work.

The Court inquires as to the practicality of revising as a whole the 1991 Final San Pedro River Watershed HSR (hereinafter "the San Pedro HSR").

Mr. Deeny responds that it is ADWR's view that existing water rights, those that were examined and addressed in the 1991 San Pedro HSR, have gone through an objection process; and many have been grouped into contested cases, should continue to be pushed forward. The Department recognizes that the Watershed File Reports need to be updated and a subflow analysis and cone of depression analysis undertaken. The Department believes that it would make more sense to go forward on a contested case basis, where the contested cases that were already grouped, or could be grouped, would receive, if necessary, a supplemental HSR and could move forward more quickly. As to new water uses that were not addressed in the San Pedro HSR, those would have to receive supplemental HSR treatment and go through all of the same hoops that the existing water uses have gone through.

The Court states that to the extent practical it wants to insure guarding against inconsistent results. The Court states that one of the difficulties with undertaking contested cases is that the parties involved in a contested case do not have full knowledge of the potential water rights of other parties who are not part of a contested case.

Mr. Deeny states that the main concern in incorporating the existing uses in a revised HSR is that the information will once again become stale and that it will slow the HSR process. Cone of depression analyses could be done as contested cases are organized. Assuming that ADWR can come up with a cone of depression analysis that is universal and without discrepancies, ADWR believes that moving forward with contested cases will be the quickest way to get the existing uses through the process. ADWR could provide the Court with supplemental analyses addressing the issue of accuracy if the Court was to proceed with contested cases.

The Department believes that to do a steady state analysis, it needs a numerical model, and the only existing numerical model is in the Sierra Vista Subwatershed. Work has been completed in some of the contested cases there, and ADWR will be able to start work on it as soon as they receive a Court approved subflow zone map.

Concerning *de minimis* water uses, Mr. Deeny states that ADWR understands that Special Master Thorson believed there to be three groups, namely, the existing uses that were covered in the *In re Sands Group of Cases*, W1-11-19, contested case (hereinafter "*Sands group*")

or “*Sands* case”), the remaining existing uses that were covered in the San Pedro HSR but which were not part of the *Sands* group of cases but fit those characteristics, and all other water uses. ADWR wants to prepare abstracts for the water uses that were covered in the San Pedro HSR but that were not part of the *Sands* group, catalog them, and open them to objections. ADWR believes that every new water right that has a potential *de minimis* use has not yet been addressed.

Mr. Deeny confirms the Court’s statement that there are four groups: post-1991 water uses and three pre-1991 groups of water uses, namely, 1) those explicitly addressed by Special Master Thorson in the *Sands* case, 2) those uses with similar or identical claims not addressed in the *Sands* case, and 3) those uses that are alleged non-domestic *de minimis* uses which Special Master Thorson did not address in the *Sands* case. ADWR recognizes that what led to Special Master Thorson’s decision in the *Sands* case was a technical report prepared by ADWR on potential *de minimis* uses done in 1993, and recognizes that ADWR may have to do a similar report for all the new uses or for potentially all of the existing non-domestic *de minimis* uses.

Clarification is provided to the Court with respect to the differences between ADWR’s proposal on the treatment of *de minimis* uses identified in the San Pedro HSR, which would be the preparation of an inventory of abstracts, and other *de minimis* uses, which would be reported in a catalogue of uses. The *Sands* group of water uses would be included in the inventory of abstracts, whereas the group of uses that has the same characteristics as the *Sands* group, but were not included in *Sands*, would be included in the catalogue of uses.

ADWR awaits guidance on whether it should use the *Sands* criteria or if the Court would like ADWR to prepare a technical report with respect to existing and new potential non-domestic *de minimis* uses.

Mr. Brown states that the San Pedro HSR needs to be completely redone. The adjudication statutes were amended in 1995, and they must be adhered to. He believes that there needs to be an analysis done on the effects of the Gila River Indian Community (“GRIC”) water rights settlement. GRIC and the San Carlos Irrigation and Drainage District waived their objection to the *de minimis* uses that were in effect prior to the implementation of the settlement, which Mr. Brown believes would have a significant impact on the 1991 San Pedro HSR. The Gila Maintenance Area is a statutory result of the settlement that has brought safe harbor areas that receive a pass from any objections that may come from downstream users, an effect that Mr. Brown believes should be integrated into an updated HSR.

Ms. Chandley agrees with the statements made by Mr. Brown.

Mr. Callahan suggests that the Court allow parties to submit memoranda setting forth their opinions concerning ADWR’s progress report.

The Court is inclined to set a period of time for interested parties to file written comments on ADWR’s progress report, inviting specific comments on whether there should be a comprehensive update of the San Pedro HSR, whether the Court should direct ADWR to go forward with the *de minimis* evaluations using the *Sands* criteria, and/or whether the Court

should request a technical report addressing what appropriate criteria should be used for *de minimis* uses other than the *Sands* group, carving out those that are subject to Special Master Schade's recommendation that consideration of non-domestic *de minimis* uses be deferred.

The Court is further inclined to request that ADWR, for informational purposes, shall provide an indication that if a comprehensive update of the San Pedro HSR was ordered, what would be the timeline for its completion and what effect this update would have on currently ordered tasks.

Mr. Brown, on behalf of the NBJ Ranch, L. P. with respect to the Salt River Project's Application for Temporary Restraining Order against Kovacovich Investment, L. P., Wiertzema Family Trust, and NBJ Ranch, L. P., requests a two-month extension of time for all current scheduling deadlines. There being no objection and good cause appearing,

IT IS ORDERED granting Mr. Brown's oral request. Counsel shall submit a revised scheduling order setting forth all agreed upon new deadlines.

IT IS FURTHER ORDERED vacating the evidentiary hearing set for November 19, 2008, and resetting same to **February 24, 2009, at 9:30 a.m.**

3:30 p.m. Matter concludes.

LATER:

Various parties have requested the opportunity to file written comments on the Progress Report Concerning Adjudication Work filed by the Arizona Department of Water Resources. To accommodate these requests,

IT IS ORDERED that any interested party may, on or before **September 30, 2008**, file a written comment (of not greater than ten (10) pages in length) on the Arizona Department of Water Resources' July 11, 2008 progress report.

IT IS FURTHER ORDERED that the Arizona Department of Water Resources shall file, on or before **October 15, 2008**, a memorandum setting forth the Department's view as to the estimated delay and other consequences that would accompany an order directing that ongoing work in the San Pedro Watershed shall be undertaken with respect to the entire watershed as discussed during the recent hearing on the Department's July 11, 2008 report.

A copy of this order is mailed to all parties on the Court approved mailing lists for the Gila River Adjudication, W-1, W-2, W-3, W-4 (Consolidated), and the Little Colorado River Adjudication, Civil No. 6417, both dated July 25, 2008.