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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HON. SUSAN R. BOLTON

November 6, 1997

P. Woods
Deputy

No W-1, W-2, W-3, W-4 (Consolidated)

In re the General Adjudication of all Rights to Use Water in the Gila River System and Source

1:40 p.m. This is the time set for discussing the preparation of the final HSR for the Gila River Indian Community. Present are: Kevin Tehan, John Schaper, Rod Lewis, Riney Salmon, Charlotte Benson, Lisa McKnight, Alfred Cox, Lauren Caster, Barry Sanders, George Carlock, Janet Wong, Tom Wilmoth, Lee Storey, David Brown, William Sullivan, John Weldon, Mike Cianci, James Callahan, Joe Sparks, Anthony Fines, Cynthia Haglin, William Anger, Loretta Humphrey, Walter Rushock, Stephen Burg, Dan Dempsey, Jennele O'Hair, Thom Tobin, Kristi Nolley, Don Weesner, John Ryley, Patrick Barry, David Roberts, Greg Kornrumph, Jeff Crockett, Special Master John Thorson and Kathy Dolge.

Court Reporter Kim Myrick is present.

The Court first outlined its thoughts for how the Gila River Indian Community Water Rights Adjudication should proceed. The Department of Water Resources (DWR) should complete the additional portions of the preliminary HSR. The parties would simultaneously address with the Court the effects of prior decrees and agreements on the Indian Community's claims and the purposes of the Reservation.

The Court further proposed that a modified Rule 26.1 disclosure could be filed stating the parties' specific position on such issues as discovery, experts to be retained and requirements for evidentiary hearings. The Court can then set a discovery and briefing schedule and evidentiary hearings where necessary.

Charlotte Benson, Vice-Chairperson of the Steering Committee, referred to the Report of the Gila River Adjudication Steering Committee dated October 28, 1997 and stated that three case management plan proposals have been submitted by the Committee.

Alfred Cox, representing the Gila River Indian Community (GRIC) and Silas Kisto, concurred that the purposes of the Reservation can be provided by the GRIC; that the Salt River Project can address the prior decrees and agreements; and, that DWR can finalize the chapter on the available water supply. He concurred with the plan for simultaneous disclosures.

Patrick Barry, representing the United States, stated that DWR's arable land study is contrary to other soil engineers' land classifications and questioned DWR's methodologies. He stated that the water depletion study should be determined by the uses and not the claims.

Mr. Barry argued that adjudicating the Tribes' water rights prior to the final HSR is not appropriate. He further stated PIA is the only standard by which Indian water rights are to be determined, referring to Judge Goodfarb's Order dated September 9, 1988.

John Weldon, representing the Salt River Project claimants, stated that the claimant should have the responsibility of preparing a hypothetical distribution system, not DWR. He further stated that without addressing distribution systems, the water duty cannot be determined. Factors such as upstream water users, non-Indian water appropriations are also needed for evaluation of available water supply.

Joseph Sparks, representing the Apache Tribes, urged that the statutory process must be followed in the preparation of the Indian HSRs. He stated that any departure from the statute will put the Tribes at risk before the final HSR is prepared. He expressed his concern that DWR has a precise and limited purpose in the adjudication, that of a technical advisor to the Court only.

Mr. Sparks requested that DWR prepare a comprehensive report as to the status of their staff and the status of the various HSRs currently being prepared.

William Sullivan, representing the Town of Gilbert, requested that the Court stay the HSR process. He stated that the claimant has not presented the factual basis, i.e. the water delivery system, to proceed with the HSR.

Mr. Barry stated that the claimants have met every statutory requirement and the burden now shifts to the objectors.

Tom Wilmoth, representing the ADWR, stated that the water adjudication section has merged with the surface water section. He stated that the expertise of over 20 employees is available for the preparation of the final HSR. He further stated that the arable lands chapter will be revised to include the comments that have been received.

Mr. Sparks renewed the Apache Tribes' Motion for Partial Summary Judgment for Full Appropriation.

LET THE RECORD REFLECT that the Court continues the stay on the Motion for Partial Summary Judgment.

Mr. Sparks then requested that copies be provided to the parties of all substantive written communications between DWR and the Court.

The Court responds that it is not aware of any ex parte written communications between DWR and the Court.

Tom Wilmoth stated that DWR projects that the preliminary HSR will be completed by the end of the year in 1998.

The Court advises the parties that a minute entry will be issued outlining the order to proceed.

3:10 p.m. Court adjourns.

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A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3, W-4 mailing list dated 11-6-97.