

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/19/2006

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M.L. Smith
Deputy

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

Contested Case No. W1-207

FILED: 1/10/07 8:00 a.m.

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

In re Proposed Gila River Indian
Community Water Rights Settlement
Special Proceeding

In Re Status Conference

MINUTE ENTRY

Northeast Courtroom 112

1:38 p.m. This is the time set for a status conference in this special proceeding. Present are: Joe P. Sparks on behalf of San Carlos Apache Tribe, Yavapai-Apache nation, and Tonto Apache Tribe (collectively "the Apache Tribes"); Cynthia M. Chandley on behalf of Phelps Dodge Corporation; John C. Lemaster and Bill Staudenmaier on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users; Jennifer K. Giff, Donald R. Pongrace, John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, and Rodney B. Lewis on behalf of the Gila River Indian Community; Scott B. McElroy and Brenna Clavi on behalf of the Navajo Nation; F. Patrick Barry on behalf of the United States; Janet L. Ronald, Scott C. Deeny and Gregg A. Houtz on behalf of the Arizona Department of Water Resources; Marilyn D. Cage on behalf of the City of Goodyear; M. James Callahan on behalf of the City of

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Phoenix; Steve Wene and Matt Bailey on behalf of the City of Safford; Stanley B. Lutz on behalf of BHP Copper Inc.; Patrick B. Sigl on behalf of the Arizona Attorney General's Office; Bill Anger on behalf of the Cities of Avondale, Glendale, Mesa, Chandler, and Scottsdale; John B. Weldon, Jr. and Lisa M. McKnight on behalf of Salt River Project; Cynthia J. Haglin on behalf of the City of Chandler; L. Anthony Fines on behalf of Gila Valley Irrigation District and Franklin Irrigation District; Michael J. Pearce on behalf of ASARCO LLC; Riney B. Salmon II on behalf of the San Carlos Irrigation District; Wilbert J. Taebel on behalf of the City of Mesa; Sally Worthington on behalf of Maricopa County; Mark A. McGinnis on behalf of LAWCO, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District. Special Master George A. Schade, Jr. is present.

Court Reporter, Patty Connolly, is present.

The Court thanks all parties who filed joinders in other parties' motions.

The Court thanks ADWR for its well organized technical report.

The Court sets forth the agenda for today's hearings.

The Court, Mr. Sparks, Mr. McElroy, and Mr. Nelson discuss the scope of this special proceeding and the applicability of the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes (May 16, 1991).

Discussion ensues concerning the Court's jurisdiction over all the sources of water involved in the proposed settlement including Central Arizona Project water.

IT IS ORDERED setting oral argument on the legal issues raised by the Arizona Supreme Court's 1991 Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes.

IT IS FURTHER ORDERED that counsel shall file memoranda by January 10, 2007, relevant to the following two issues: (1) is the Court bound in connection with approving the pending settlement by the 1991 Special Procedural Order? and (2) In evaluating the proposed settlement, should the Court distinguish between water subject to the Court's jurisdiction and

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water from sources other than those subject to the Court's jurisdiction? Counsel are advised that prescribed page limits will be enforced.

IT IS FURTHER ORDERED setting oral argument on these issues on January 17, 2007, at 9:30 a.m. (time allotted: 1 day) at:

NORTHEAST REGIONAL COURT CENTER
18380 NORTH 40TH STREET
COURTROOM 112
PHOENIX, ARIZONA 85032

Mr. Sparks and Mr. Barry discuss the use and timing of discovery in special proceedings. The Court informs counsel of its requirements regarding discovery disputes.

IT IS ORDERED directing those parties affected or their counsel to confer regularly and undertake all steps necessary to resolve all discovery disputes prior to January 31, 2007. Any discovery disputes that remain shall be resolved by notifying the Court that the parties continue to have a dispute.

IT IS FURTHER ORDERED that parties continuing to have a discovery dispute shall appear for a hearing before this Court on Saturday, March 3, 2007, at 10:00 a.m. At this hearing, the Court and counsel will resolve any disputes that remain.

IT IS FURTHER ORDERED that each party affected shall submit an affidavit consistent with *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183 (App. 1983), 673 P.2d 927 (1983), that details the incurred and estimated fees and costs generated in connection with their discovery dispute. Fees and costs shall be ordered to be paid by the party(s) who the Court concludes made court interaction necessary. Should the party receiving the award be a governmental agency, the agency's affidavit of fees and costs shall be based upon the highest billing rate of senior counsel for the opposing party.

Mr. Michael J. Pearce addresses the Court concerning ASARCO LLC's objection.

IT IS ORDERED that ASARCO LLC shall file its response to the motion for summary disposition of ASARCO's objection and cross-motion for summary judgment, if any, by January 19, 2007.

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IT IS FURTHER ORDERED that any settling party shall file its response, if any, by January 30, 2007.

IT IS FURTHER ORDERED setting oral argument on the matters concerning the objection of ASARCO LLC on February 14, 2007, at 3:15 p.m. (time allotted: 1 Hour) in this division.

IT IS FURTHER ORDERED setting oral argument on the motion for summary disposition of the objection filed by the Navajo Nation on February 5, 2007, at 3:15 p.m. (time allotted: 1 Hour) in this division.

Discussion ensues concerning the objections filed by several claimants and the motions for their summary disposition.

IT IS ORDERED that responses to motions involving the objections filed by L. P. Fulton and Odette Fulton, Paul E. Price and Bridget A. Price, Gay Riba, Earl Zarbin and Dorothy Zarbin, Jack D. Campbell, and Cindy J. Ramey shall be filed by January 19, 2007.

IT IS FURTHER ORDERED setting oral argument on the motions for summary disposition of the objections filed by L. P. and Odette Fulton, Paul E. Price and Bridget A. Price, Gay Riba, Earl Zarbin and Dorothy Zarbin, Jack D. Campbell, and Cindy J. Ramey on January 26, 2007, at 10:00 a.m. (time allotted: 1 day) in this division.

The Court, Mr. Sparks, and Mr. Nelson discuss the motions for summary disposition concerning the objections filed by the Apache Tribes and the Lower Gila Water Users.

IT IS ORDERED that responses to the motions for summary disposition of the objections filed by the Apache Tribes and the Lower Gila Water Users shall be filed by February 5, 2007. Replies, if any, shall be filed by February 15, 2007.

IT IS FURTHER ORDERED setting oral argument on the motions for summary disposition of the objections filed by the Apache Tribes and the Lower Gila Water Users on February 21, 2007, at 1:30 p.m. in this division.

A copy of this order is mailed to all parties on the Court-approved mailing list for Contested Case No. W1-207 dated October 12, 2006.