

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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SEP 28 '00

SEP 29 '00

09/28/2000

DIST. CENTER
CLERK OF THE COURT
FORM V000
Clerk of the Court

HON. SUSAN R. BOLTON
CIVIL PRESIDING JUDGE

P. Woods
Deputy

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

FILED: SEP 28 2000

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

MINUTE ENTRY

On June 14, 2000, the Court outlined its proposal for priorities for a proposed schedule for HSR's to be completed and issues in the San Pedro River Basin that should be litigated. The Court asked for the parties' comments within thirty days on the proposed proceedings. The Court has now reviewed those comments and enters its order concerning a schedule of HSR's to be completed in the adjudication and priority for issues to be litigated in the San Pedro River Basin.

The Court first notes that the Department of Water Resources stated in its comments filed July 14, 2000 that as of that date, the Department had not yet received a list of allottees for the Gila River Indian Community from the Bureau of Indian Affairs. This list has been promised for more than six months. Counsel for the Gila River Indian Community has advised the Court at the last several status conferences that it was awaiting information from the Bureau in order to provide the allottee information to the Department so that the final San Pedro HSR can go forward.

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If the allottee information has not been delivered to the Department of Water Resources as of the date of this minute entry,

IT IS ORDERED that counsel for the Gila River Indian Community and counsel for the Bureau of Indian Affairs advise this Court in writing within ten (10) days of the date of this minute entry why the allottee information has not yet been provided and the date upon which it will be provided.

The Court's first priority is the finalization of the Gila River Indian Community's HSR which is being delayed because the allottee information has not been provided to the Department.

Concerning the San Pedro HSR, the parties have presented several options as to how the Department should proceed on the San Pedro in light of the change in the law and the number of years since the final HSR was published. After reviewing the parties' comments, the Court concludes that the Department's suggestion is the best one. Rather than order the Department to undertake to update all its watershed file reports for all of the statements of claimant in the San Pedro River Basin, the Court adopts the proposal of the Department. As contested cases are scheduled, the Department will be ordered to update and supplement the watershed file reports to include recommendations of water right attributes and also to advise the Court concerning new uses and any new or amended statement of claimants. Objections will be allowed as the updates are published.

The Court further concludes that before the Department is ordered to do any additional work in San Pedro, this Court should rule on the Special Master's report on de minimis uses. The Court understands the status to be that the report was issued, objections to the report were filed and the matter awaits further scheduling by the Court.

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The State agency claimants have suggested that the Court set a hearing to allow the parties to argue the merits of their objections and the procedure by which the Court should resolve those objections. The State agency claimants suggest that the Special Master performed technical analysis on his own without the benefit of expert testimony and that this Court will require additional evidence in order to rule on the Special Master's report. The Court declines to proceed in this way. The procedure the Court will employ to resolve the objections will be to order responses and replies to the objections and to allow oral argument.

IT IS THEREFORE ORDERED that any party wishing to file a response to an objection to the Special Master's de minimis uses report may do so by **November 9, 2000**. Replies shall be due by **December 8, 2000**. Oral argument will be scheduled by separate order.

The United States has suggested that, in addition to immediately taking up the Special Master's report on de minimis uses, the Court schedule the litigation of the federal reservation claims at Fort Huachuca. In the comments filed by the United States, it noted that the Fort's claims are based solely on federal law and do not include state claims as previously thought. The United States further notes that because the claims of Fort Huachuca are predominantly to ground water, the Court can now litigate these claims in light of the Supreme Court's ruling in Issues 4 and 5. The Court agrees with the United States that it would be appropriate at this time for the Special Master to organize Fort Huachuca as the next case to be litigated in San Pedro.

The Court further agrees with the United States that any objections to the Special Master's report on the Saguaro National Monument should be ruled on and a final order entered

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with regard to Saguaro National Monument's reserved rights claims as soon as the objection period concludes.

In light of the United States' comments with regard to the Coronado National Memorial and the San Pedro Riparian National Conservation Area, no specific scheduling of these claims will be undertaken at this time.

The United States suggests that it would be appropriate to take up the claims of the City of Sierra Vista following Fort Huachuca. The Court declines to refer Sierra Vista's claims to the Special Master at this time. The Court also agrees with the suggestion of the United States that the Public Water Reserve No. 107 claims and stockponds of the Forest Service not be scheduled at this time.

In its minute of June 14, 2000, the Court also listed as a possible priority item the release of the preliminary HSR for the San Carlos Apache Reservation. The United States and the San Carlos Apache Tribe have suggested to the Court that the San Carlos Apache HSR should only be published in connection with an Upper Gila HSR because the claims of both the San Carlos Apache Tribe and claimants on the Upper Gila are tied together in the Gila Decree.

IT IS ORDERED that the Department of Water Resources (which indicated in its comments that it could proceed with the completion of a preliminary HSR for the San Carlos Apache Reservation in a relatively short period of time) advise the Court in writing within forty-five (45) days of the date of this minute entry of the time within which a preliminary HSR could be released on the San Carlos Apache Reservation in light of the other priorities set forth in this order and further advise the Court of the work that would have to be undertaken and the timeline involved if the preliminary San Carlos Apache Reservation HSR and the preliminary Upper Gila HSR were ordered released simultaneously.

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IT IS FURTHER ORDERED that the Department also advise the Court of its position with regard to the advisability of this suggestion by the United States and the San Carlos Apache Tribes.

Concerning the priority of the scheduling of remaining HSR's, the Department requests the Court not to make any orders to finalize the Upper Salt River Watershed HSR until after the Supreme Court issues its decision regarding Issue No. 2 and this Court issues its decision regarding de minimis uses, suggesting that rulings on these legal issues are necessary prerequisites to maximize the use of the Department resources. The Supreme Court issued its opinion on Issue No. 2 on September 21, 2000. The Court will not set a date for the finalization of the Upper Salt River Watershed HSR until the Special Master's de minimis report is ruled on.

The Court notes that the suggestion was made that additional comments be allowed before the finalization of the Upper Salt HSR due to the passage of time since the issuance of the preliminary HSR. The Court agrees. Before this Court enters an order to the Department to produce a final HSR for the Upper Salt, an additional comment period will be provided.

The Court continues to believe that the Fort Apache Indian Reservation HSR should be one of the last HSR's prepared unless the Fort Apache Indian Reservation indicates its intent to participate in the adjudication process. The Court also declines to enter any orders regarding the Verde River, the Camp Verde Reservation and the Tonto Apache Reservation HSR's at this time.

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IT IS FURTHER ORDERED that the United States advise the Court within 60 days of the date of this minute entry whether SOC No. 39-L8-35089 filed on behalf of the AK Chin Indian Community can be dismissed based on the 1978 and 1984 settlements.

IT IS FURTHER ORDERED that the United States verify the status of Statements of Claimants filed on behalf of the Tohono O'Odham. The Court is advised that the Southern Arizona Water Rights Settlement settled claims for some of the reservation districts. The United States shall advise the Court within 60 days which, if any, of the following claims are still outstanding: SOC No. 39-L8-35090, No. 38-07-74335, No. 39-09-74333 and No. 39-09-74436.

IT IS FURTHER ORDERED that the United States advise the Court within 60 days of the status of SOC No. 39-05-54027 filed on behalf of the Hualapai Indian Reservation which appears to claim water outside the Gila River basin.

* * *

The Court having received and considered HRS Farm's Application for Substitution of Counsel,

IT IS ORDERED approving and settling formal written Order that Richard N. Morrison and Brenda W. Burman are substituted as counsel for HRS Farms, L.L.P. and Shiela B. Schmidt is permitted to withdraw effective as of this date, signed by the Court on September 28, 2000, and filed (entered) with the Clerk on September 28, 2000.

* * *

The Court having received and considered the State of Arizona's Application for Ex Parte Order Approving Substitution of Counsel and Amending Mailing List,

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IT IS ORDERED approving and settling formal written Orders in W-1, W-2, W-3 and W-4; W1-203; W1-204; W1-205; and W1-206 approving the substitution of Assistant Attorney General Graham M. Clark, Jr. for Mary Mangotich Grier as counsel for the State of Arizona as a claimant in these proceedings.

IT IS FURTHER ORDERED that the mailing list in this proceeding shall be amended to delete the name and address presently listed for Mary Mangotich Grier and to add in place thereof the following:

Graham M. Clark, Jr.
Assistant Attorney General
Natural Resources Section
Office of the Attorney General
1275 W. Washington
Phoenix, Arizona 85007-2926

Formal written Orders in accordance with the above are signed by the Court on September 28, 2000, and filed (entered) with the Clerk on September 28, 2000.

Pursuant to the State of Arizona's written Request to Change Designated Representative on Steering Committee,

IT IS ORDERED approving and settling formal written Order that Graham M. Clark, Jr. is appointed to the Steering Committee as representative of the State of Arizona as a claimant, in place of Mary Mangotich Grier, signed by the Court on September 28, 2000, and filed (entered) with the Clerk on September 28, 2000.

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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 and W-4 mailing list dated June 16, 2000. This is also the Court-approved mailing list for W1-203, W1-205 and W1-206.