

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/11/2013

CLERK OF THE COURT
FORM V000

SPECIAL MASTER GEORGE A. SCHADE, JR.

K. Ballard
Deputy

FILED: 06/24/2013

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

In Re Fort Huachuca

CIVIL NO: W1-11-605

In Re Telephonic Status Conference Regarding the
Second Phase of this Case

CONFERENCE

IN CHAMBERS:

9:02 a.m. This is the time set for a telephonic status conference.

Telephonic appearances are as follows:

L. William Staudenmaier, III, Sean T. Hood, and Shilpa Hunter-Patel appear on behalf of Freeport-McMoRan Corporation (Freeport-McMoRan). John B. Weldon, Jr. and Patrick B. Sigl appear on behalf of Salt River Project. R. Lee Leininger appears on behalf of the United States Department of Justice (United States). Joe P. Sparks and Julia M. Kolsrud appear on behalf of the San Carlos Apache Tribe and Tonto Apache Tribe. Gregory L. Adams appears on behalf of ASARCO LLC. Susan B. Montgomery appears on behalf of the Yavapai-Apache Nation. William P. Sullivan appears on behalf of the Sierra Vista Parties (Pueblo Del Sol Water Company, Bella Vista Water Company, and the City of Sierra Vista). David Albert Brown appears on behalf of Babacomari Ranch. Theresa M. Craig appears on behalf of the State Land Department. Janet L. Ronald and Nicole D. Klobas appear on behalf of the Arizona Department of Water Resources (ADWR). Daniel D. Haws and Mark A. Holycross appear on behalf of the United States Department of the Army.

Court Reporter Scott Coniam is present.

The December 19, 2011 order listed three issues designated for an evidentiary hearing in the second phase of the case:

- 1) What is, in detail, the scope of water uses encompassed by the term “military purposes”?
- 2) What is the quantity of water reserved to fill the military purposes?
- 3) Are the sources of water, other than groundwater, adequate to accomplish the military purposes, and, if not, what is the quantity of groundwater required to accomplish those purposes?

The purpose of today’s conference was set to consider four matters:

- 1) The designation of issues for briefing and any pre-evidentiary hearing issues that merit briefing;
- 2) Scheduling of deadlines for filing motions, responses, and replies;
- 3) Scheduling of an oral argument and date(s) for an evidentiary hearing; and
- 4) The scope and timing of ADWR’s participation in these proceedings.

Since scheduling today’s conference, the Special Master has received a motion by the United States asking to extend the deadlines for exchanging expert reports to December 6, 2013, and completing discovery to February 28, 2014.

The Special Master believes the parties will be in a better position to designate issues for briefing after the completion of discovery. Assuming the foregoing dates are acceptable to all parties, the Special Master suggests that another conference be scheduled for March 13, 2014, to discuss issues for briefing. The Special Master commits to issuing a ruling by April 11, 2014.

The Special Master proposes that all motions be filed by June 4, 2014; responses be filed by July 18, 2014; and all replies be filed by August 22, 2014. The Special Master proposes that oral argument on the motions be scheduled for 9:00 a.m. on September 3, 2014, in the Maricopa County Superior Court.

The Special Master requests that the parties then consider having an evidentiary hearing in November or December 2014, in the Maricopa County Superior Court.

The Special Master proposes the appointment of a steering or a settlement committee consisting of seven members and proposes the following potential members: Ms. Craig, Mr. Caster, Mr. Hood, Mr. Leininger, Mr. Weldon or McGinnis, Mr. Sparks,

and Mr. Sullivan. The members would serve for two years, and the committee would select its own chair.

As for the scope and timing of ADWR's participation, the Special Master understands that ADWR is working on a lot of other assignments, and therefore is not sure how involved ADWR can be in these proceedings.

The Special Master would also like the parties to discuss whether this case should be transferred to the Court (Judge Brain).

Discussions are held regarding the foregoing issues. Mr. Staudenmaier suggests that appointments to a steering or settlement committee be made by party rather than designating a specific attorney.

The parties appear to be in agreement regarding the proposed schedule set forth above, and are in agreement that the Special Master should retain this case until the completion of discovery. With the exception of the United States, counsel do not see the need for a steering or settlement committee at this time.

Mr. Leininger advises the Special Master that he will confer with Mr. Hood in hopes of reaching a stipulated protective order with regard to certain documents requested by Mr. Hood. Otherwise, the United States will be filing a motion for protective order in the near future.

The Special Master inquires whether Mr. Leininger anticipates filing one motion for protective order or whether additional orders may be necessary. At this stage, Mr. Leininger is hopeful that one stipulated protective order will be sufficient to cover the concerns of the United States.

Mr. Weldon requests copies of the discovery recently produced by the United States in response to Freeport-McMoRan's requests for production.

Mr. Leininger indicates that the supplemental disclosures have not yet been posted to ADWR's web site as the United States is still in the process of collecting information for that purpose; however, in the meantime, Mr. Leininger indicates that he will provide copies of the discovery to any party requesting the same. Messrs. Weldon, Sullivan, and Sparks request that copies be provided to them.

The Special Master addresses the parties regarding his concerns that the parties will get bogged down in discovery. Counsel are admonished that discovery not become a strategy for delay.

Messrs. Sparks, Hood, and Leininger comment regarding the areas of discovery they believe are necessary in this phase.

Ms. Ronald confirms that ADWR has a number of other obligations that will limit its involvement in this phase of the case.

9:53 a.m. Matter concludes.

A copy of this minute entry is mailed to all parties on the Court approved mailing list for Contested Case No. W1-11-605 dated January 10, 2013.