

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/28/2020

CLERK OF THE COURT
Form V000

SPECIAL WATER MASTER
SUSAN HARRIS

S. Ortega
Deputy

In re Town of Huachuca,
Contested Case Nos. W1-11-0245
and W1-11-3397 (Consolidated)

FILED: 06/16/2020

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

MINUTE ENTRY

Courtroom CCB - 301

1:30 p.m. This is the time set for a Telephonic Status Conference before Special Water Master Susan Harris.

The following attorneys appear telephonically: David Brown on behalf of Michael and Susan Cavender, Gila Valley Irrigation District, Franklin Irrigation District, and the City of Cottonwood; Carrie Brennan and Kevin Crestin on behalf of Arizona State Land Department; Joe Sparks and Laurel Herrmann on behalf of San Carlos Apache Tribe; Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”); John Burnside on behalf of Arizona Public Service Company (“APS”) and BHP Copper; William Staudenmaier on behalf of APS; Alexandria Arboleda and Megan Tracy, observing on behalf of City of Tempe; Tom Murphy on behalf of Gila River Indian Community; Mark McGinnis and John Weldon on behalf of Salt River Project (“SRP”); Susan Montgomery appearing on behalf of Yavapai-Apache Nation and observing on behalf of Pascua Yaqui Tribe; Sean Hood on behalf of Freeport Minerals Corporation; Steven Wene on behalf of City of Safford and Town of Huachuca; William Anger on

behalf of City of Mesa; Charles Cahoy on behalf of City of Phoenix; Jenny Winkler, observing on behalf of the City of Chandler; and Rhett Billingsley on behalf of ASARCO.

The following party appears telephonically: Anna Magoffin on behalf of Magoffin Family Trust.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the objection filed by Mr. Murphy.

The Court asks Mr. Murphy if additional notice should be given to parties in cases that have been stayed pending resolution of the issue. Mr. Murphy believes that the notice to the other watershed parties should come after the Court determines if there is an issue of broad legal importance.

Discussion is held on issues regarding notice. Under 12.03 of the Rules for Proceedings Before the Special Master notice needs to be given to the court-approved mailing list for the Gila River Adjudication. In addition, there are cases in the Winkleman subwatershed that have been stayed and there may be cases in the Reddington Subwatersheds with a similar issue that have not been initiated yet. The Court asks counsel if notice should be given in those cases to the court-approved mailing list.

Mr. Cahoy states that he does not have a position on the specific watersheds and agrees with the Court's original proposition regarding notice as to when the Court designates an issue of broad legal importance.

Mr. Brown states that notice should also be given to the mailing list to the Little Colorado Watershed.

Ms. Brennan agrees that the safest thing to do would be to provide notice on both adjudications including the cases that have been stayed.

Mr. Sparks agrees with Ms. Brennan's position.

Mr. Staudenmaier agrees with the previously stated positions in that the broader notice to the full court-approved mailing list in both adjudications and specific notice to the contested cases identified.

Mr. Burnside agrees with comments made by Mr. Staudenmaier.

Mr. McGinnis believes all that is required under the rule is notice to the court-approved mailing list in the Gila Adjudication because all of the other parties to the adjudication have had the opportunity to be on the mailing list and individual cases have

not been re-noticed in the past. Mr. McGinnis states that a courtesy notice to both the stayed cases and any other cases the Court believes raise the issue in the Reddington sub watershed is not a bad idea but not required under the rule. With respect to the LCR, Mr. McGinnis states that both adjudications should be noticed if both issued proposed by SRP are to be designated.

Ms. Montgomery states that a broad notice is probably best to be consistent with due process and that it might be a wise idea to notice the LCR. It is of course important to notice the parties on the mailing list for the Verde watershed W1-106.

Mr. Hood states that the Court should not have to do anything except submit notice to the Gila River Adjudication mailing list, but does not disagree with the suggestion that a broader notice is a good idea but not necessary.

Mr. Anger supports the broad notice.

Ms. Magoffin states that notice should stay within the Gila River watershed.

Mr. Billingsley agrees that notice is likely only required for the Gila River Adjudication mailing list and that it is prudent to provide notice to both adjudications and has no issue with the Court providing specific notice to the individual cases referenced.

Discussion is held regarding the issues in SRP's disclosure statement and response as it relates to equitable authority and broad legal significance.

Mr. Wene discusses the municipal provider's growth and future demand issues and states that he would like to see them addressed before their rights are adjudicated.

Mr. Cahoy confirms the City of Phoenix's position as set forth in its filing as it relates to surplus water code, and states that it is premature at this point to designate an issue on the matter of community growth. As to Yavapai Apache Nation sub issues, he states that the priority date becomes extremely important and needs to be addressed as well as the specifics of when they are equitably entitled.

Mr. Staudenmaier addresses the unduly argumentative assertion by SRP and thinks there is merit to having the Court designate a straightforward and simple question that all parties can brief to the full extent they think they need to.

Ms. Montgomery states her position on Yavapai Apache-Nation's sub issues (b) and (c) regarding priority date and equity. With regard to the growing cities doctrine, she does agree with Mr. Cahoy that the issue is premature at this point.

Mr. Sparks believes that if the Court is inclined to designate the issue of broad legal importance, he joins SRP's positions on the issue and also agrees with Yavapai Apache-Nation's position on the issue of equity.

Mr. Anger agrees with the comments made by Mr. Cahoy and points out that the City of Mesa does not agree with the issue of the ground water pumpers because it doesn't distinguish between pre-1919 pumpers and post-1919 pumpers, which is very important.

2:04 p.m. Matter concludes.

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case Numbers W1-11-0245 and W1-11-3397.