

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2018

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

A. Hatfield

Deputy

In re: Brighthawk LLC
Contested Case No. W1-11-3312

FILED: 12/5/2018

In Re: The General Adjudication
of All Rights to Use Water in the
Gila River System and Source
W-1, W-2, W-3 and W-4 (Consolidated)

In re: Status Conference

MINUTE ENTRY

Courtroom: CCB 301

9:15 a.m. This is the time set for a status conference before Special Master Susan Ward Harris.

The following attorneys and parties appear in person: David A. Brown on behalf of Brighthawk LLC; Tom Wagner and Betty Wagner on behalf of Brighthawk LLC; Michael Foy and R. Jeffrey Heilman on behalf of Salt River Project; and Joe Sparks on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe.

The following attorneys are present telephonically: John Burnside on behalf of BHP Copper; Charles Cahoy on behalf of the City of Phoenix; Kevin Crestin on behalf of the Arizona State Land Department; Kimberly Parks on behalf of the Arizona Department of Water Resources; Bradley Pew on behalf of ASARCO; and Jay Tomkus on behalf of the Pascua Yaqui Tribe and the Yavapai-Apache Nation.

Court reporter, Celeste Paxton Jones, is present and a record of the proceedings is also made digitally.

The Court notes that Brighthawk LLC has filed a chain of title, ADWR has submitted a map, and proposed abstracts have been prepared for *de minimis* water uses. Additionally, comments are due today on the abstracts for domestic and stock watering.

Mr. Sparks states that the Tribes will be filing comments on the domestic and stock watering abstracts today.

Discussion is held regarding an abstract for a proposed water right for irrigation use. Mr. Sparks states that there is a link missing in the chain of title based on an email received from Mr. Brown concerning his client's efforts to locate all title documents at the county recorder's office. Mr. Brown argues that all of the deeds in the chain of title have been provided because his clients hired Fidelity Title to provide a complete set of title documents. He states that there is no gap in the chain of title and all deeds have been provided.

Further discussion is held regarding the Zapata homestead which included 20 acres of irrigated land. Mr. Sparks states that there is no map or legal description of the 20 acres of irrigation land. He said that he has seen a 1925 aerial photograph showing fruit trees growing on the property. Mr. Brown states that there is not a map of the irrigated area in the file.

The Court instructs Mr. Sparks to obtain a copy of the entire homestead file on Manuel Zapata from the National Archives, review it, provide any additional documents not included in ADWR's file, and to specifically identify his client's remaining issues following his review.

Mr. Foy states SRP's position regarding the issue of chain of title. In settlement mode, it supports Brighthawk's producing as a courtesy the documents requested by Mr. Sparks. If the matter is not settled, then SPR's position is that a time should be set for filing a dispositive motion on the issue.

The Court inquires if ADWR maintains files recording severances and transfers. Ms. Parks confirms that ADWR does, but is unsure on how the files are indexed.

The Court directs ADWR to file a statement advising whether or not there has been any severance and transfer of the water rights associated with the land owned by Brighthawk LLC. In its filing, ADWR is requested to describe the process of locating the documents and include the amount of time the effort required. The Court hesitates to set a deadline because it does not know the difficulty of the project. If ADWR cannot file the statement within thirty days, ADWR is to file a status report and advise the parties about the difficulties it has encountered in the process.

10:03 a.m. Matter concludes.

LATER

This case involves potential water rights for a domestic use (115-04-ADB-001-DM001), a stock watering use (115-04-ADB-001-SW001) and an irrigation use (115-04-ADB-IR001). The domestic use and the stock watering use constitute *de minimis* uses to which a summary adjudication process applies. Proposed abstracts for each *de minimis*

use have been prepared by the court, reviewed by ADWR, and distributed to the parties for suggested corrections. The Claimant filed suggested corrections on November 5, 2018 proposing a number of changes. The San Carlos Apache Tribe and Tonto Apache Tribe filed a document entitled “Comments on the Suggestion Corrections to the Proposed Abstracts for 115-04-009-SW001 and 115-04-ADB-001-DM001” dated November 7, 2018 (“Comments”). Notwithstanding the caption, the document does not appear to include any suggested changes to either the proposed abstracts or to Claimant’s suggested corrections.

In the Comments, the San Carlos Apache Tribe and Tonto Apache Tribe also requested 30 days to work with Claimant’s counsel to develop a draft proposed abstract for water rights about which counsel for the San Carlos Apache Tribe and Tonto Apache Tribe has raised the issue of whether the deeds for the property from the date of the Zapata homestead to the deed conveying title to the Claimant has also transferred water rights. Claimant’s counsel has represented that his client has obtained from a title company and provided to the objectors a complete set of the deeds that conveyed the land at issue from Mr. Zapata to Brighthawk, LLC.

IT IS ORDERED granting the request made by the San Carlos Apache Tribe and Tonto Apache Tribe for additional time to work on proposed abstracts. Counsel for San Carlos Apache Tribe and Tonto Apache Tribe shall file by **December 17, 2018**, the following:

- 1) Any changes or corrections to the proposed abstracts for 115-04-009-SW001 and 115-04-ADB-001-DM001 and any comments on the corrections to those proposed abstracts filed by Brighthawk LLC on November 7, 2018; and,
- 2) Either
 - a. A proposed abstract for 115-04-AB-001-IR001 acceptable to all of the parties; or
 - b. All documents obtained from the homestead file on Manuel Zapata that are not included in the ADWR file and a statement specifically identifying the water characteristic(s) for 115-04-AB-001-IR001 about which a dispute exists and the basis for the dispute.

IT IS FURTHER ORDERED that ADWR shall file by **December 10, 2018**, a report that identifies any severance and transfer of a water right appurtenant to Claimant’s land or if the examination of the records has not been concluded a status report regarding the examination.

A copy of this minute entry is mailed to all persons listed on the Court-approved mailing list for Contested Case No. W1-11-3312.