

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

02/05/2020

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

L. Stogsdill
Deputy

FILED: March 23, 2020

In re: the General Adjudication
of All Rights to Use Water in the
Little Colorado River System and Source

CV 6417-400

In Re: Lower Little Colorado River
Sub-watershed
In re: Status Conference

MINUTE ENTRY

Courtroom: CCB 301

1:30 p.m. This is the time set for a Status Conference before Special Master Susan Ward Harris to identify issues to determine a procedure for water uses for stock ponds and stock watering rights.

Court reporter, Lori Thielmann is present and a record of the proceedings is made digitally.

The following attorneys appear in person: Carrie J. Brennan for the Arizona State Land Department, David A. Brown and Bradley J. Pew for the LCR Coalition, Phillip Londen and Grace R. Rebling for the Hope Tribe, Mark A. McGinnis for the Salt River Project and Kimberly R. Parks for ADWR.

The following objectors appear telephonically: Don Hunsaker and Sue Fountain.

The following attorneys appear telephonically: Charles L. Cahoy for the City of Phoenix (observing), Judith M. Dworkin for the Navajo Nation, Christina C. Sheehan for the Atkinson Trading Company, Inc., Lee A. Storey for the City of Flagstaff, and Vanessa Boyd Willard and David Negri for the United States Department of Justice.

The Court explains that the purpose of this general adjudication of water rights in the Lower Little Colorado River watershed is to determine people's rights to water in the Lower Little Colorado River watershed. This general adjudication is just beginning and it will take a long time to complete.

The Court further explained that among the steps necessary to establish a water right, a person must establish certain facts. The person must show the amount of water used, where the water is used, the source of the water, and when the water use began. Disputes among water users can arise as to each of those facts.

The Court stated the purpose of today's proceeding is not to determine any person's water rights. Instead, the purpose of today's proceeding is to determine whether a procedure can be adopted that will more quickly and easily determine water rights for stockponds and stock watering so that neither the Court nor the parties have to commit a lot of time and resources to establishing those water rights.

Mr. Hunsaker talked about wildlife on his ranch and that they have to be watered because there are no lakes or ponds in his area. He states that he has small tanks/tubs for the wildlife and there is no runoff.

Ms. Fountain states that she has horses and cattle on her property. She also is concerned about the wildlife. The Court explained that no rights are being determined in the current proceeding, but instead the purpose is to design a procedure that can be used to more quickly determine water rights for stock and wildlife watering,

Ms. Fountain questions whether she will be alerted when substantive proceedings are begun to determine water rights. The Court responded that she would be alerted again once substantive proceedings are begun. The Court further explained that the process is that a person must file a Statement of Claimant with Arizona Department of Water Resources (ADWR) and then ADWR will investigate all of the claimed uses and prepare a preliminary report. Notice will be given of the preliminary report and people will have the opportunity to file comments to the preliminary report. The next step is that ADWR will review all of the comments and prepare a final report. Notice will be given when the final report is completed. The final report will include ADWR's recommendations for potential water rights. Once the final report is issued, objections can be filed to ADWR's recommendations or those recommendations can be accepted as correct. Only after ADWR prepares a final report and objections are filed will the court begin the process of determining water rights for which claims have been filed.

Ms. Rebling states that the Hopi Tribe is not objecting to ADWR's report.

Ms. Brennan said that Arizona State Land Department did not file an objection.

Ms. Willard said that the United States did not file objections.

Ms. Storey, Mr. Brown and Mr. McGinnis advise the Court that they filed objections. Mr. Brown stated that he has not received copies of all of the objections filed and they are not yet available on the website. The Court stated that 32 objections had been received and read.

Mr. Brown clarified that the LCR Coalition filed comments and states that it agrees with ADWR's conclusions but commented on and objected to the nature of the way ADWR reached those conclusions because ADWR was too conservative and the LCR Coalition did not want that conservative method used on the Upper LCR or any other proceeding. He feels that wells should be excluded in this matter as very few stockponds are fed from wells. He stated that a separate report should be prepared for small wells. He also said that ADWR should have an opportunity to respond to the comments and objections filed.

The Court advises counsel and the objectors that all objections will be scanned in and placed on the Maricopa Superior Court's website for the General Adjudication.

Mr. McGinnis agrees with Mr. Brown that the ADWR Report supports a *de minimis* classification for stockponds, stock and wildlife watering. He suggests that the process going forward could involve a catalog in the HSR of *de minimis* rights that would be separated from other claims. Objections to the *de minimis* catalog could be similar to those allowed in the San Pedro to the abstracts that are being prepared for *de minimis* water rights. He suggested that the abstracts for the *de minimis* uses could be prepared and included as part of the final report.

Ms. Dworkin voiced concerns that there may have been some underreporting. She also felt ADWR had some specific areas that it did not correctly identify as either within or outside the reservation. ADWR relied on counties for determination of the land status, which she feels may not be the best way to identify whether the land is inside or outside of the reservation.

Ms. Parks states that ADWR feels all of the objections need to be reviewed prior to setting any further hearings.

Mr. Brown proposed that after ADWR responds, the issues should be narrowed before a hearing is scheduled.

Ms. Dworkin agreed with holding a status conference after ADWR responds to the comments/objections.

Mr. Hunsaker questions why other objectors have not participated in this hearing. He is concerned that ranchers and people using water for cattle and wildlife watering are not represented.

As the Court requested, Mr. Brown advises the Court, counsel, and the parties about the different cities, organizations, and businesses that are part of the LCR Coalition. Mr. Brown also stated that he represents the Arizona Cattlegrowers Association in the overall case for the Little Colorado River Adjudication.

Ms. Parks advises the Court and parties that ADWR did not include stockponds which rely on wells in their report.

IT IS ORDERED that ADWR shall file their response to the objections relative to the stock watering and stockponds only within 45 days. The Court will set another Status Conference thereafter to determine appropriate deadlines.

2:08 p.m. Matter concludes

LATER:

General Explanation of General Adjudication

In Arizona, people, businesses, non-profit organizations, Indian tribes, and the state and federal government can hold a legal right to use water from Arizona's lakes, ponds, springs, streams, canyons, ravines, other natural surface channels, and definite underground channels. Water from these sources is known as "appropriable water". Water that is pumped from wells can also be considered as appropriable water in a very limited number of situations. Those situations include wells that pump water from beneath the bed of a stream or the land immediately adjacent to the stream or pump water more closely related to the stream than to the surrounding clay, silt, sand or gravel left by the stream. This last category of water is known as "subflow". Subflow is considered appropriable water.

Due to a combination of increased demand and droughts, it became clear in Arizona that it was necessary to examine all of the claims made for water rights to establish valid legal rights that the owners of those water rights could protect and enforce. The Arizona legislature authorized a procedure known as the General Adjudication to determine water rights. Many western states use general adjudications to determine water rights. General adjudications in some areas of the United States have been completed and others, like the general adjudications in Arizona, are still in process.

The General Adjudication is a judicial proceeding to determine the extent and priority of all water rights to appropriable water in an entire river system. Arizona is conducting a General Adjudication of the Little Colorado River system. A river system means all appropriable water in that system and all water subject to claims under federal law.

The determination of the extent and priority of a right to water claimed by a person requires the Court to examine the legal basis for the right as well as make decisions about the facts related to the claim. Facts important to the establishment of a claimed water right are:

1. The location where the water is used;
2. The location from which the water is diverted;
3. The source of the water;
4. The purpose for which the water is used;

5. The date on which the water was put to use; and
6. The amount of water used each year.

Reasons to Adopt Procedures to Simplify the Process

Each of the facts listed above can potentially result in factual disputes among water users. Disputes cost the person claiming water rights time and money. Disputes also impose costs on the court in terms of time and resources and delay the resolution of other claims for water rights.

In the past, the Court has concluded that the costs of completely resolving all disputes for certain types of claims outweigh the benefits to the person claiming the water right, the person objecting to the water right, and to the general adjudication process. Where the Court has reached the decision that costs exceed benefits, procedures have been put into place to expedite the processing of claims.

Action Necessary to Adopt Procedures that Simplify the Process

The types of cases for which the Court has adopted the more expedited procedures involve claims for rights to water where the total impact of those types of claims is very small on other water users. The first step in a determination about the impact of the claims is to request ADWR to investigate the extent of the use in the particular watershed and produce a report.

In March 2018, ADWR was asked to apply its scientific expertise and assess the impact of the stockponds and claimed stock and wildlife watering on other water users in the Lower Little Colorado subwatershed. It investigated 4,172 possible stockponds and 294 stock and wildlife watering uses.

In July 2019, ADWR filed its report. It concluded that stockponds remove, at most, 6.8% of the outflow from the subwatershed. It also concluded that stock and wildlife watering has a minimal impact on the surface water system.

As in all proceedings in the General Adjudication, once ADWR has issued a report, an opportunity is given to water users who have filed claims for water rights to object to any aspect of the report. Objections have been filed to ADWR's report and must be resolved as part of the process to determine whether expedited procedures can be used to adjudicate claims for water rights for stockponds and stock and wildlife watering.

Objections

A brief discussion about some of the objections filed may be helpful to an understanding of the types, sources, and locations of water uses to which this particular proceeding will apply.

1. Domestic. A number of people filed objections stating that they used water for domestic purposes. The procedures that are currently being considered will only apply to claims for water rights for stockponds and stock and wildlife watering. No consideration is being given at this time to adopt expedited procedures for claims for domestic use.
2. Irrigation. Objectors also filed with concerns about irrigation use. The procedures that are currently being considered will only apply to claims for water rights for stockponds and stock and wildlife watering. No action is being taken to adopt expedited procedures for claims for rights to water for irrigation use.
3. Wells. A number of people filed objections stating that they have wells. The ADWR report did not consider stockponds that relied on wells as a source of water. It focused on claims for water rights for stockponds and stock and wildlife watering where the source of water was surface water such as streams, springs or lakes.
4. Geographic Location. Objectors filed statements that they did not use water in the Lower Little Colorado River subwatershed. Any expedited procedures adopted to determine rights to water for stockponds and stock watering will apply to the use of water in the Lower Little Colorado River subwatershed. Before similar procedures can be adopted in the other subwatersheds, ADWR will need to conduct an investigation to determine the impact of the types of claims on those other subwatersheds.

Deadline for ADWR to File Response

Due to the impact of COVID-19, the date for ADWR to file its response to comments/objections that directly address either the methodology used in its report or the conclusions of the report shall be extended to **May 1, 2020**.

A copy of this order is mailed to all persons listed on the Court approved mailing list.