

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/18/2023

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

S. Motzer

Deputy

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

FILED: 02/21/2023

MINUTE ENTRY

Courtroom: CCB 301

1:30 p.m. This is the time set for a Status Conference regarding which watershed should be adjudicated after the Verde River Watershed.

The following attorneys and parties appear via Court Connect:

- Adam Schwartz observing for the City of Mesa
- Andrew Corimski observing for the United States Army
- Rhett Billingsley observing for ASARCO
- Carrie Brennan on behalf of Arizona State Land Department
- Larry Caster, Brian Heiserman on behalf of LCR Coalition
- Charles Cahoy observing for the City of Phoenix
- Mark McGinnis representing Salt River Project (“SRP”)
- Craig McGinnis, Jonathan Charlton, Katrina Wilkinson, Lucas Shaw, Michel Foy, Rodney Held, and John Weldon observing for SRP, along with in-house counsel Stanley Lutz
- David Brown, J.A. Brown and Garrett Perkins representing various claimants
- Sean Hood representing Freeport Minerals
- Jenny Winkler representing City of Chandler
- Joe Sparks representing the San Carlos Apache Tribe
- Kevin Crestin representing Arizona State Land Department
- Kimberly Parks and Kome Akpolo representing Arizona Department of Water Resources
- Lee Storey and Luke Erickson representing City of Flagstaff

- Michael Pearce representing Buckeye Water Conservation and Drainage District
- Robyn Interpreter and Sue Montgomery observing for the Yavapai Apache Nation and the Pasqua Yaqui Tribe
- Bill Staudenmaier representing Arizona Public Service Company
- Mike Van Alsburg observing for the Cortaro-Marana Irrigation District
- Chris Payne and Amanda Jenkins representing Town of Gilbert
- John Burnside representing BHP Copper
- Bill Anger and Michael Rowland representing Cities of Avondale, Glendale, Mesa, Scottsdale, and Tempe
- William Sullivan representing the Cortaro-Marana Irrigation District and Town of Wickenburg
- Yosef Negose and Maggie Woodward representing the United States
- Tom Murphy representing Gila River Indian Community

Also present are: Douglas Nelson and Lisa Dubas

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

Mr. McGinnis addresses the Court stating that this would be the third time that the sequence has been addressed starting with Pretrial Order No. 1. It was also the subject of an order dated September 28, 2005 approving the Special Master's Report dated July 16, 2004. The sequence adopted for the Gila River Adjudication was: San Pedro River, Verde River, Upper Gila River, Upper Salt River, Upper Agua Fria River, Lower Gila River, and Upper Santa Cruz River. Mr. McGinnis stated that he believes it is acceptable to proceed with the Upper Gila River next. Mr. McGinnis said that the preliminary HSR for the Upper Salt River Watershed is outdated and needs to be redone. Mr. McGinnis asked for an opportunity to brief the sequence if the Upper Salt River Watershed is determined to be the next watershed.

Mr. Brown believes that another hearing should be set to consider the Little Colorado River Watershed as well. He proposed that the Upper Salt River, Upper Gila River, and the Upper LCR be undertaken simultaneously upon the conclusion of the Verde River. He states that ADWR has already done a substantial amount of work in the Upper Salt River and Upper LCR watersheds. Mr. Brown represents that he has clients in the Upper Salt River watershed who have been waiting a long time to have their rights adjudicated. He also addressed a separate HSR for Salt River Project which he supports so long as it includes Buckeye and Roosevelt and all of the Valley Cities and all of the entities in that area. Such a HSR should be prepared after the three he already mentioned.

Mr. Sullivan agrees with Mr. Brown and also requests a joint status conference with the Little Colorado River Adjudication that will also give additional time for the parties to consider the proposals presented. He also suggests the creation of a new court document so that the parties are not required to read through 35 years of orders.

Mr. Sparks states that due to the short notice of this proceeding he has not had an opportunity to discuss the issues with his client. He requests a few weeks to consider the options.

Mr. Caster agrees with Mr. Brown and has nothing additional to add.

Mr. Cahoy states that the 2005 Order has already established a sequence of watersheds and any change should be made closer in time (2-3 years) to when the work will be done. The City will need time to consider the SRP suggestion for a separate HSR.

Mr. Staudenmaier address the Court and states that he has not had a chance to confer with his client.

Ms. Montgomery states that the 2005 sequence is acceptable has no position at this time on the SPR suggestion and needs time to weigh the considerations.

Mr. Hood generally agrees with Mr. Brown's suggestions and makes sense to him that work on those three listed subwatersheds should be accomplished at once. He notes that in the history of sequencing, Pretrial Order No. 1 states that the Upper Salt River watershed would go next. The 2005 Order is specific to subflow mapping and does not change the order of preparation of the HSRs.

Ms. Brennan states that she would like to hear from ADWR about its reasons for not undertaking the Upper Salt next. She indicates that she would like to finish the Little Colorado River Adjudication. She will need to discuss the SRP proposal with her client.

Ms. Storey states that she agrees with Ms. Brennan and Mr. Brown, stating that she wishes to finish the Little Colorado River adjudication, but has no thoughts pertaining to Salt River or Gila River. She points out that the Santa Cruz watershed has had the subflow zone mapped by ADWR up to the point where the Santa Cruz AMA meets the Tucson AMA. In 2001, ADWR put together abstracts for the water rights for the Santa Cruz AMA. It also put together a volume regarding *de minimis* uses. Due to the work already completed, the Santa Cruz watershed should be considered. She also suggests that it would be a good watershed because it presents issues of broad legal importance that could be resolved.

Mr. Negose addresses the Court and states he and his team need to consult with the agency clients and requests 90 days to submit comments in writing.

Ms. Winkler states that she has not had the opportunity to consider the options or discuss them with the clients but inquires as to why there is an issue at this time.

The Court states that the next watersheds need to be identified well in advance so that the ADWR can budget, obtain the funds, enter into the necessary third-party contracts, map the subflow zone, and undertake the *de minimis* investigation prior to beginning a HSR. Under the current system, ADWR will undertake years of work prior to the start of the next HSR.

Mr. Akpolo addresses the Court. ADWR does have a slight change in course of what ADWR would like to avoid. If the Upper Salt is next, it asks to redo the preliminary HSR. It would like to avoid having the Lower Gila being chosen as the next HSR.

Mr. Anger states that he agrees with the existing schedule with the Upper Gila River next. He also indicates that he agrees with Mr. Cahoy relating waiting until they are closer to the HSRs being completed.

Mr. Murphy states that he is in agreement with Mr. Sparks in that he has not been provided with enough notice to discuss the options with his client. He requests the opportunity to submit written comments followed by a status conference being held in a month or so.

Mr. McGinnis agrees with the completion of the Little Colorado River adjudication. He states that SRP does not have a proposal yet for a separate HSR. He adds the Santa Cruz watershed merits consideration based on Ms. Storey's comments.

Mr. Sparks and Mr. Sullivan agree that the parties should submit written comments. Mr. Sullivan would like the Court to issue a proposal and the parties comment on that order.

Mr. Brown states that the Santa Cruz has a long stretch north of the AMA that has not been studied. He does not mind having that watershed moved up. He also has clients in Agua Fria watershed that would like their rights adjudicated. In addition, to reiterating his thoughts, the Upper Salt River, Gila River, and LCR should be done simultaneously because the subflow should be mapped quickly. He agrees with getting the *de minimis* under way.

Mr. Sparks indicates that he believes that there is some confusion regarding scheduling. He believed that Upper Salt River is next under Pretrial Order No. 1 in terms of the HSR. The 2005 Order dealt with subflow.

Mr. McGinnis points out the sequence in Pretrial Order No. 1 has not been followed or anticipated completion dates met.

2:19 p.m. Matter concludes.