

SUPERIOR COURT OF ARIZONA
MARICIPA COUNTY

February 28, 2024

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

T. DeRaddo
Deputy

Case No. W1-106

In Re: Verde River Watershed

FILED: 3/5/24

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: Virtual Pre-Trial Conference
ADWR's Technical Report on *De Minimis Uses*

MINUTE ENTRY

Central Court Building – Courtroom 301

9:30 a.m. This is the time set for a virtual/telephonic Pre-Trial Conference on the Arizona Department of Water Resources' Technical Report on *De Minimis Uses*, via the Teams/Court Connect platform. All parties appear virtually. Appearances are as follows:

- Mike Rolland for the Cities of Avondale, Scottsdale, Glendale, Tempe and Mesa
- Brandon and Natasha Pacheco and their Living Trust as groundwater users in the Verde River System
- Michael Foy and Katrina Wilkinson for SRP
- Carrie Brennan and Kevin Crestin for Arizona State Land Development (ASLD)
- Kent Milliard for The Tonto Apache Tribe
- John Burnside for Town of Chino Valley
- Dan McCarl for The United States
- Sue Montgomery for the Yavapai Apache Nation and observing for the Pasqua Yaqui Tribe
- Carrie Brennan and Kevin Crestin for the Arizona State Land Department
- Kimberly Parks and Karen Nielsen for ADWR
- Brian Heiserman for the City of Cottonwood
- Rhett Billingsley for ASARCO, LLC
- Steve Wene for the City of Safford and the Town of Camp Verde

- Katya Lancero observing on behalf of the Navajo Nation
- Mark Phillips observing on behalf of the Arizona Water Company
- Carla Consoli for the Nature Conservancy
- Also present virtually are Maggie Wood, Kathryn Ust and Phillip Londen and A.J. Corimski

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

The Court inquires of the counsel, the number of witnesses each party intends to call and the length of time each witness is scheduled to testify both on direct examination and cross examination. Discussion is held.

Discussion is held on the Court's strict adherence to who may and may not be a part of the proceedings. The Court is aware that there are many parties/counsel who are interested in participating in the proceedings. The Court states that there is no such thing as a "non-objection" objection. If the parties have not filed an objection to the documents, the appropriate way of participating in the hearings is to file a motion to intervene.

The Court has received a Request for Clarification from the Arizona State Land Department regarding the Court's recent Order on appearances at trial.

Regarding the clarification, the Court informs the parties that there shall be no new issues or methodologies. The Court will not entertain new or multiple methodologies. The Court states that the current methodology that was used by Mr. Kellogg suggests that ADWR was overly conservative. There are no problems with the simple presentation of what Mr. Kellogg has analyzed, how he has analyzed it, and what his conclusions are.

However, if a party wants or intends to propose a new methodology for ADWR to use, or ask ADWR to do something different, that would be a "new methodology" that should have been stated in an objection and will not be permitted unless a proper objection was filed.

Ms. Brennan states that the Court has not yet excluded any portions of Mr. Kellogg's report nor heard Mr. Kellogg's testimony. She asserts that if SRP intends to request that the Court exclude any portions of Mr. Kellogg's report, they should first file a motion *in limine* and specify which portions of the report they feel should be excluded. It should then be fully briefed and ruled upon prior to trial.

Mr. Foy states that from SRP's perspective, ADWR has added brand new methodology. He asserts that there is a now a groundwater modeling component to their report to find whether a certain well is a certain distance from the subflow zone and whether it is having an impact on appropriable water. He states that groundwater modeling is not stated in the ADWR report, or in the objections. He asserts that ADWR wants to do an analysis of upstream irrigation uses to try to figure a way to quantify those numbers and add them back into water availability. He believes that ADWR is

advocating for a different number with respect to all three of the relevant factors: water availability, number of uses, and impact of those uses. He believes this is stated in the Kellogg report (Table 4).

The Court states that anyone may evaluate the numbers that have been provided with any method that they so choose to review the numbers. They may present an alternative way to look at the numbers that either support or refute those numbers. The parties may not ask that ADWR change their opinions unless a proper objection had been filed.

Discussion is held regarding trial witnesses.

Kevin Crestin states that The Arizona State Land Department currently has one witness for direct examination (one hour – up to 3 hours) but may have up to 3 witnesses.

Mike Foy states that SRP intends to have 6 witnesses, including two expert witnesses: Ed Harvey (2 hours on direct examination), and Andrew Case (3 hours) on direct examination. There may be a rebuttal witness, Dave Colvin. These estimates assume that expert reports are not admitted.

Kimberly Parks states that ADWR intends to call 3 witnesses at trial. (The estimated time for each witness is between one and two hours).

For the reason stated on the record, and in the interest of time during the trial, with no objections from counsel,

IT IS ORDERED that the expert reports that have been shared with everyone, are all admitted into evidence.

It is decided that the Court will set four days for trial. The Court states that there may be 10 or so entities for cross examination of each witness. Discussion is held regarding possible time limits for cross examination of each witness. Mr. Foy suggests that not less than one hour for cross examination be imposed.

Discussion is held regarding opening statements.

Mr. Foy requests that the Court assist with the order presentation of evidence, and that ADWR should be first in the order.

Mr. Foy states that his expert Andrew Case, SRP's expert has a conflict with the current trial dates. He suggests that the trial be reset for either July 24, 2024 or to the week of July 29, 2024. The Court will review the entire General Stream Adjudication schedule and include a new date in the minute entry.

Ms. Parks states that either of the alternative dates will work on her calendar.

9:59 a.m. Matter concludes.

A copy of this minute entry will be sent to all people on the court-approved mailing list for this matter.

NOTE: All court proceedings are recorded digitally and not by a court reporter. The parties or counsel **may request a CD of the proceedings**. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

LATER:

IT IS ORDERED, the Verde River *de minimis* trial will be rescheduled to begin Monday, August 5, 2024, and continue through Thursday, August 8, 2024. Proceedings will run as follows:

- A. Each day will start at 9:00 a.m. and end no later 5:00 p.m.
- B. There will be no opening statements.
- C. All parties will be permitted a closing statement of no more than 5 minutes.
- D. Direct examination of each witness may be no longer than 1 hour per witness. Any time less than 60 minutes may be reserved for redirect questioning.
- E. Cross examination by any party may be no longer than 1 hour per party per witness. However multiple parties will not be permitted to repeat questions. Duplicate or repetitive questioning will be cut short by the Court.
- F. Parties who do not wish to present direct testimony or cross examine witnesses will be permitted to present a statement to the Court of no more than 10 minutes.
- G. The order of testimony will be as follows:
 1. ADWR
 2. Brandon and Natasha Pacheco
 3. Arizona State Land
 4. Salt River Project
 5. City of Phoenix
 6. Town of Chino Valley
 7. Tonto Apache Tribe
 8. Yavapai Apache Tribe
 9. United States
- H. The trial will be held at
Maricopa County Superior Court
East Court Building
101 W. Jefferson St
Courtroom 613
Phoenix, AZ