

SUPERIOR COURT OF ARIZONA
MARICIPA COUNTY

March 3, 2022

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

T. DeRaddo
Deputy

In Re: Subflow Technical Report
Verde River Watershed, Case No. W1-106

FILED: 3/10/2022

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

Central Court Building – Courtroom 301

1:30 p.m. This is the time set for a virtual/telephonic Status Conference via the Team / Court Connect platform. Appearances are as follows:

- Bill Anger for the Cities of Avondale, Scottsdale, Tempe, Glendale and Mesa
- Carrie Brennan and Kevin Crestin for Arizona State Land Development (ASLD)
- Charles Cahoy for the City of Phoenix
- Clyde Halstead for the City of Prescott
- David Gehlert for the United States and on behalf of Rebecca Ross
- Michael Foy, John Weldon and Mark McGinnis for SRP
- Jenny Winkler for the City of Chandler
- Kimberly Parks for Arizona Department of Water Resources (ADWR)
- Sue Montgomery for the Yavapai Apache Nation
- William Staudenmaier and John Burnside for the Town of Chino Valley
- Lee Storey and Luke Erickson for the Town of Prescott Valley
- Steve Wene for the City of Safford
- Rhett Billingsley observing for ASARCO, LLC
- Lauren Mulhern for the Tonto Apache Tribe
- Carla Consoli for the Nature Conservancy
- David Brown for the City of Cottonwood

- Sarah Ransom observing for Brandon and Natasha Pacheco and their Living Trust
- Tony Gioia observing as a defender of Verde River
- Also present virtually are Nick Eicher and Axel Buchwalter.

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

Mr. Foy states that pursuant to the Court's order, SRP is prepared to discuss what SRP did to distribute the well data. Mr. Foy states that he distributed thumb drives to the parties. (W1-106 list)

Mr. Foy addresses the question on how to calculate available stream flows in the Verde watershed. Mr. Foy believes that DWR's methodology has defects in its calculations.

Mr. Foy addresses the Court's question regarding whether the *de minimus* report should be based on median flows or more seasonal reports. Mr. Foy asserts that if the category of uses is going to be *de minimus*, then the parties need to be looking at low flow measurements rather than a straight median flow.

Using the scenario that Mr. Foy presented, the Court asks if the irrigators need all the additional water in June, do you anticipate that actions will be brought against homeowners to shut off wells? Mr. Foy discusses enforcement during the low flow periods. Domestic uses are not consistent all year.

What would SRP do differently? Mr. Foy believes that two possibilities are scientifically appropriate. One approach would be to calculate median flows in June, which would be an estimate of the low flow month. The other would be to calculate median flows of those gages during the lowest 7-day flow period. Mr. Foy believes that the latter is preferable.

The Court asks whether data needs to be compiled to create a water budget. Discussion is held regarding when the preliminary HSRs are finished.

The Court asks, if SRP is taking the position that if *de minimus* should be done for the entire watershed, would it be better to wait until all of the HSRs are finished or ask ADWR to compile a water budget for the entire watershed without completing the HSRs?

Mr. Foy states that he believes that there is enough data to do this now.

Should a *de minimus* report be prepared for the entire watershed or would it be appropriate to compile a *de minimus* report for each sub-watershed? Mr. Foy states that SRP's position is that there should be a single report that covers the full watershed; however, in that report it is important to break down the analysis by sub-watershed basis. Mr. Foy asserts that if there is going to be a *de minimus* standard, it should be done up front so that the *de minimus* standard can be incorporated as a separate chapter of the Hydrographic Survey Report. Mr. Foy states that SRP is in agreement with ADWR that

the Tangle Creek gage is a reliable proxy for bottom of the watershed. Mr. Foy believes that SRP has the data to do this now.

Mr. Foy states that the main question is consider is, do the domestic uses in the aggregate above the Tangle Creek gage have a substantial impact at Tangle Creek? If the upstream domestic uses in the aggregate have a substantial non-*de minimus* impact at the Tangle Creek gage, then that would end the inquiry. Mr. Foy elaborates on this point.

Discussion is held regarding the Tangle Creek upstream uses. The Court asks about the Big Chino and the Little Chino sub-watersheds. Mr. Foy believes that there are approximately 12,000 wells for domestic use in those watersheds.

Discussion is held regarding ADWR doing analysis soon proposed by SRP. ADWR would need to know the number of wells above the Tangle Creek gage, the number of wells above Camp Verde, and the number of wells above Paulden. Mr. Foy said that information is readily available.

Discussion is held regarding whether ADWR's tables in its Report were a cumulative analysis. Mr. Foy believes that ADWR did provide a cumulative analysis but disagrees with methodology used.

Regarding ADWR: if there is going to be a *de minimus* standard, should it be one-acre foot per annum? SRP believes that one-acre foot is appropriate. The Court informs the parties that the Yavapai Apache Nation does have an objection to this standard.

Clyde Halstead joins in Mr. Foy's analysis and opinions. The *de minimus* standard is relational: what amount of water is small compared to the amount of water available? He states that within the Verde Valley Watershed there are vast differences as to the amount of water that is available. Mr. Halstead states that based on the Tangle Creek and the Paulden gages, there is 10 times the amount of water that is available at the Tangle Creek gage than at Paulden. The *de minimus* standard based off the Tangle Creek Creek gage is not *de minimus* based on the Paulden gage. There is much less water in the Little and Big Chino sub-watersheds.

The Court asks Mr. Halstead if it is his position to have one *de minimus* report or should there be reports done separately for Big and Little Chino? Mr. Halstead states that if each sub-watershed or even grouping of sub-watersheds is analyzed separately within in a single report, he does not object to a single report. It is the *de minimus* standard that is the difference. With respect to the Little and Big Chino, he believes that a separate analysis should be done. He also states that there are issues with metering wells. A one-acre foot should be the standard.

Sue Montgomery states that she will answer the same questions as Mr. Foy as follows: With respect to question one: the Yavapai Apache Nation believes that a sub-watershed by sub-watershed basis is the best approach. She states that variable and widely divergent conditions within the sub-watersheds. Where the Yavapai Apache sits in

the Lower Verde Valley is quite different from other places. Ms. Montgomery is in agreement with SRP as to using all of the gages on the river.

With respect to question two and median annual flows: the Yavapai Apache Tribe is not supportive of that approach. Ms. Montgomery believes that it misses temporal and seasonal issues as well as the location issues.

With respect to question three: Ms. Montgomery believes that one-acre foot should be used to make the *de minimis* calculations and using a sub-watershed by sub-watershed approach to determine whether their domestic use is *de minimus*. Ms. Montgomery elaborates on her position regarding how to process the domestic users not claiming one acre feet of water.

Ms. Montgomery states that the position of the Yavapai Apache Nation has evolved, and that based on all of the information presented, one acre foot can be used for purposes of the calculation.

Lee Storey said that the Town of Prescott Valley has water service in the Little Chino subwatershed. Part of the management in the Little Chino in the Prescott AMA deals with exempt wells that are unregulated that are in the Little Chino and the Agua Fria subwatersheds. It is important that the *de minimus* should be decided on a watershed-wide basis and not sub-watershed from an administrative basis. Another possible approach is to separately evaluate wells in the subflow zone from the rest of the wells in the watershed. She thinks the annual approach is the best as opposed to seasonal flow.

Kimberly Parks reported that ADWR is receiving a tremendous number of calls from well owners in the Verde.

Carrie Brennan stated that the ASLD did not file comments to ADWR's report because they believe that ADWR is correct in its findings. Ms. Brennan elaborates on her position and agrees with Ms. Storey about the number of wells that may not be pumping from the subflow. She also disagrees with using low flow numbers.

Mr. Staudemeier addresses the Court. The Town of Chino Valley is concerned that if the case proceeds the way the parties have discussed, there will be a greater workload on the Court and on ADWR, and on every participating party in the Verde River without a *de minimis* standard.

David Brown generally agreed with Ms. Brennan. He also stated that need to look at return flow. Concerned about well owners listed in a catalog that do not have a basis of right. Mr. Brown believes that it is better to wait for the entire HSR, and to determine how Judge Brain or the Arizona Supreme Court weighs in on the issue involving appropriation of water by owners of wells in the subflow zone.

The Court inquires of all counsel: Is there any party appearing today who has an objection to using a one acre foot standard for the purposes of calculation of whether domestic water uses in the Verde Watershed are *de minimus*? No objections having been made; question number three is deemed moot.

IT IS ORDERED that Mr. Foy shall write the SRP proposal and file it by **March 14, 2022**.

IT IS FURTHER ORDERED that ADWR shall respond by **March 28, 2022** as to how much time it will need if the Court were to adopt the SRP proposal. All other parties may respond to the SRP proposal by **March 28, 2022**.

2:56 p.m. Matter concludes.

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.

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