

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

May 6, 2022

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

M. Pritchard
Deputy

FILED: May 20, 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: Asarco-Irrigation & Asarco-Diversion
Contested Case Nos. W1-11-2801 & W1-11-2798

MINUTE ENTRY

Courtroom: CCB 301

1:30 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris.

The following attorneys and parties appear via Court Connect:

- Charles Cahoy on behalf of City of Phoenix
- Kimberly Parks and Kome Akpolo on behalf of the Arizona Department of Water Resources (“ADWR”)
- Mark McGinnis on behalf of Salt River Project (“SRP”)
- Joe Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Thomas Murphy on behalf of the Gila River Indian Community
- Sue Montgomery of behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaquai Tribe)
- Lauren Mulhern on behalf of the Tonto Apache Tribe
- Dave Gehlert on behalf of U.S. proprietary agencies
- Daniel McCarl on behalf of U.S. Department of Justice, Natural Resources Section

- John Burnside observing on behalf of BHP Copper
- Sean Hood on behalf of ASARCO, LLC

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

The Court has reviewed the January status report from ASARCO and notes that there is an agreement in principal with SRP. The Court inquires about the status.

Mr. Hood states that a final settlement agreement has been reached between ASARCO and SRP.

The Court inquires as to the status of settlement discussions with Gila River Indian Community.

Mr. Hood states that several discussions have taken place and information exchanged, but a full settlement has not yet been reached. He requests more time to complete settlement discussions.

The Court inquires as to the status of settlement discussions with the San Carlos Apache Tribe.

Mr. Hood states that settlement discussions are ongoing, but unfortunately needed to be postponed for several weeks. He is optimistic that a settlement can be reached.

The Court inquires as to the status of settlement discussions with the Yavapai Apache Nation.

Mr. Hood states that the Yavapai Apache Nation are among the objectors that have precedential concerns. He hopes to settle with the neighboring water users first and then views it as likely that the issues with the remaining objectors will be settled expeditiously.

The Court inquires as to the status of settlement discussions with Tonto Apache Tribe.

Mr. Hood believes this will be the same as with the Yavapai Apache Nation.

The Court inquires as to the status of settlement discussions with the U.S.

Mr. Hood states the U.S. is acting in their capacity for their trustees. ASARCO's view is that if settlement can be reached with the San Carlos Apache Tribe and the Gila River Indian Community, the objections of the U.S. would be resolved through that process.

The Court inquires if the U.S. has been actively participating in the negotiations.

Mr. Hood states they have not.

The Court inquires if there is a reason to not involve the U.S. instead of waiting until the end of discussions.

Mr. Hood states that ASARCO's view is that the interests of the U.S. are tied to those of the San Carlos Apache Tribe and the Gila River Indian Community, and therefore they wanted to start discussions with those tribes first. They do not have an objection to the U.S. being involved in these discussions. He notes that one aspect of the claims for the PV property is a Game and Fish Department water interest. Therefore the U.S. has an active interest in one of the claims separate from their objections on the basis of their trustee's interest.

The Court inquires about the next anticipated update.

Mr. Hood requests until about November 4, 2022. He hopes to have made great progress by then.

The Court feels that six months is too long.

Ms. Montgomery agrees with Mr. Hood's characterization of the Yavapai Apache Nation's viewpoint. They request that as settlement nears with the other parties that they be given time to bring the issue to their tribal council for approval.

The Court inquires how much time they would need.

Ms. Montgomery states they would need at least six weeks.

The Court inquires as to Mr. Murphy's position.

Mr. Murphy agrees with Mr. Hood's comments.

The Court inquires why progress cannot be made in three rather than six months.

Mr. Murphy states that progress can be made, but due to the overlapping basins and issues, more time would be better to make more progress.

The Court inquires as to Mr. Sparks' position.

Mr. Sparks agrees with Mr. Murphy's and Mr. Hood's descriptions. This is a very complicated issue as it involves a previously existing decree and ASARCO's previously adjudicated water rights. He believes a settlement can be reached but does not know how long it will take. He thinks six months is pragmatic.

The Court inquires if the U.S. needs to become actively involved at this stage.

Mr. Sparks would like it if they were involved now, but understands if they have limited availability. He knows that any settlement reached would need to be approved by the U.S. and therefore would prefer their involvement, but notes that may delay the discussions.

The Court inquires as to Ms. Mulhern's position.

Ms. Mulhern has nothing to add.

The Court inquires as to Mr. Gehlert's position.

Mr. Gehlert is here in particular on behalf of the Bureau of Reclamation. Their position is noted in the statement of claimant. He defers to Mr. McCarl.

The Court inquires as to Mr. McCarl's position.

Mr. McCarl states he is new to the case. He therefore declines to comment on a timeline or their preference in joining discussions at this time.

The Court states in her experience it takes the U.S. about six weeks to approve a settlement reached by a tribe and therefore the U.S. should be involved sooner rather than later.

The Court inquires as to Mr. McGinnis' position.

Mr. McGinnis states that his further role in this case would be to sign an already formulated stipulation or withdraw his objections. He states their stipulation is nearly finished.

The Court inquires if the Bureau of Reclamation is part of the settlement agreement or the other class of objectors.

Mr. McGinnis states they were not part of the agreement and they have a separate role.

The Court inquires when Mr. Hood is going to involve the Bureau of Reclamation.

Mr. Hood states the Bureau of Reclamation is not an objector to their claims, but rather an assignee of one claim associated with one ranch. Therefore they may be involved in litigation later, but they do not have objections that need to be resolved and their role is a simple one. Mr. Hood further states that all have been working diligently on settlement and he expects much progress to be made.

Based on the foregoing,

The Court will set a Status Conference by minute entry and may ask for interim status report.

1:52 p.m. Matter concludes.

LATER:

IT IS ORDERED that Daniel McCarl on behalf of U.S. Department of Justice shall file a status report on the progress of the settlement discussions by **September 30, 2022**.

IT IS FURTHER ORDERED setting a Status Conference on **November 4, 2022 at 1:30**. The Status Conference shall be held using the Court Connect program. Instructions for Court Connect are attached as Attachment A. If you receive this Order by email, click on the red box “Join Court Connect Hearing” on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect. The Status Conference may also be attended telephonically using the following instructions:

Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)
Dial Collaboration (conference) Code 357264#

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

Attachment A



Court Connect Hearing Notice for In re Asarco-Irrigation & Asarco-Diversion

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re Asarco-Irrigation & Asarco-Diversion, Contested Case No. W1-11-2801 & 2798

Start Date/Time: November 4, 2022 at 1:30 p.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)

