

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/11/2013

CLERK OF THE COURT  
FORM V000

SPECIAL MASTER GEORGE A. SCHADE, JR.

K. Ballard  
Deputy

FILED: 06/24/2013

In Re the General Adjudication  
of All Rights to Use Water in the  
Gila River System and Source

In Re PWR 107 Claims

CIVIL NO: W1-11-1174

In Re Telephonic Status Conference

CONFERENCE

**IN CHAMBERS:**

9:53 a.m. This is the time set for a telephonic status conference.

Telephonic appearances are as follows (which are being reflected in this minute entry based on the announcements made in the In re Fort Huachuca, Contested Case No. W1-11-605, conference which immediately preceded this conference):

L. William Staudenmaier, III, Sean T. Hood, and Shilpa Hunter-Patel appear on behalf of Freeport-McMoRan Corporation. John B. Weldon, Jr. and Patrick B. Sigl appear on behalf of Salt River Project. R. Lee Leininger appears on behalf of the United States Department of Justice. Joe P. Sparks and Julia M. Kolsrud appear on behalf of the San Carlos Apache Tribe and Tonto Apache Tribe. Gregory L. Adams appears on behalf of ASARCO LLC. Susan B. Montgomery appears on behalf of the Yavapai-Apache Nation. William P. Sullivan appears on behalf of the Sierra Vista Parties (Pueblo Del Sol Water Company, Bella Vista Water Company, and the City of Sierra Vista). David Albert Brown appears on behalf of Babacomari Ranch. Theresa M. Craig appears on behalf of the State Land Department. Janet L. Ronald and Nicole D. Klobas appear on behalf of the Arizona Department of Water Resources (ADWR). Daniel D. Haws and Mark A. Holycross appear on behalf of the United States Department of the Army.

Court Reporter Scott Coniam is present.

The Special Master has reviewed the filings in this case, and it appears from the last report of the San Carlos Apache Tribe (Tribe) that the Tribe believes there is no further value in negotiations between the Tribe and the United States regarding the 16 springs remaining to be adjudicated.

The Special Master suggests the following alternatives for concluding this case:

1. Continue the stay of the case indefinitely;
2. Give the parties an opportunity to determine if the Tribe and the United States can stipulate to a conditional reserved water right in which there would be a water right granted to the Bureau of Land Management (BLM). The parties would submit abstracts of water rights with the understanding that these are all conditional reserved water rights for the 16 springs, and conditional on the determination, some day, of the southwestern boundary of the Tribe. The Special Master would consider having a review every two years for up to four years to review the status of the boundary issue and any other matter that comes up. During this time, the Court would retain jurisdiction over the case; or
3. Conduct a hearing in which the Special Master or the Court would issue a conditional reserved water right following the hearing assuming the parties agree the Special Master and the Court have the authority to grant a conditional reserved right.

Mr. Sparks advises the Special Master that short of proof to the Tribe that the springs are not located on the reservation or drain into the reservation, the Tribe believes it already has a decreed right to the water. Mr. Sparks further advises that relations between the BLM and the Tribe are difficult in that area.

The Special Master inquires if there has been any progress in resolving the southwestern boundary issue. Mr. Sparks reports that there has been no progress to resolve that issue, and he has been working on it since 1974.

Mr. Leininger states that the Department of the Interior's legal position remains that the Tribe's southwestern boundary has been established.

The parties are in agreement that this Court does not have jurisdiction to resolve the boundary issue.

Mr. Leininger indicates that he will need to confer with his client, but believes the suggestion that the parties attempt to agree to a conditional water right will be acceptable, providing the stipulated resolution is not such that the United States will have to take any additional action with regard to determination of the boundary.

Mr. Leininger suggests, in the alternative, that the Special Master accept ADWR's technical report issued in 2005 regarding the location of the springs, accept what the parties previously submitted with regard to these claims, and issue a report and recommendation for a partial decree, to which Mr. Sparks would be permitted to file objections, to be resolved by Judge Brain, if necessary.

Mr. Leininger confirms that the United States has abstracts of water rights prepared for the 16 springs, which were provided to the parties years ago and can be circulated again, if necessary.

The Special Master inquires if ADWR can assist in resolving this matter in any way.

Ms. Ronald replies that she believes ADWR has already done all it can to assist in this matter.

Mr. Sparks suggests that if the United States provides GPS locations for the springs and a definition in the topography to see where the springs drain, unimpeded, that would be a substantial step to the Tribe's ability to enter into a stipulation. Additionally, Mr. Sparks requests the location of the springs and visual recordings of which way the springs drain, and pictures of the retentions and reservoirs, if they exist there – where exactly are the springs?, what kind of water retention devices are there?, and do the springs drain towards the reservation, even if, arguably, they are not on the reservation?

Mr. Weldon believes the dispute pertains only to whether the United States has a senior right to the water. Mr. Sparks agrees with Mr. Weldon.

Mr. Leininger indicates that he will provide the claims file that is available to support each water claim, on the understanding that it has been difficult to access most of these springs. Mr. Leininger questions whether further identification of the 16 springs is necessary as he believes the United States has established everything it needs to in order to meet all the requirements of the elements of these water rights, including location. Mr. Leininger further believes it may be necessary to conduct a hearing in this matter so that the BLM can come in and explain its files and how it investigated these sites.

With regard to Mr. Sparks' request for GPS locations, Mr. Leininger does not know the current status as to whether or not these 16 springs have been recently visited. Mr. Leininger is amenable to investigating whether any of the BLM's staff has been out in the area recently and have taken GPS readings of the locations; however, he does not want to commit his client to the expense of having to go out and initiate new investigations.

The Special Master will take all the comments under advisement and make a determination on how to move this case forward.

10:27 a.m. Matter concludes.

A copy of this minute entry is mailed to all parties on the Court approved mailing list for Contested Case No. W1-11-1174 dated January 10, 2013.