

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/21/2021

CLERK OF THE COURT
Form V000

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A. Parmar
Deputy

FILED: April 22, 2021

In re: Town of Huachuca City and
Whiting Ranches
Contested Case No. W1-11-0245

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)

Re: Readiness Conference

MINUTE ENTRY

Courtroom CCB - 301

1:30 p.m. This is the time set for telephonic readiness conference before the Special Master.

The following attorneys appear telephonically:

- Tom Murphy on behalf of the Gila River Indian Community (“GRIC”)
- Robyn Interpreter on behalf of the Yavapai-Apache Nation and observing on behalf of the Pascua Yaqui Tribe
- Mark McGinnis and John Weldon on behalf of Salt River Project (“SRP”)
- Kimberly Parks observing on behalf of Arizona Department of Water Resources (“ADWR”)
- Sean Hood and Bradley Pew on behalf of Freeport Minerals
- John Burnside on behalf of BHP Copper and Arizona Public Service (“APS”)

- David Brown on behalf of Michael J. and Susan S. Cavender, Gila River Irrigation District, Franklin Irrigation District and City of Cottonwood
- Rhett Billingsley on behalf of American Smelting and Refining Company (“ASARCO”)
- Carrie Brennan and Kevin Crestin on behalf of Arizona State Land Department (“ASLD”)
- Joe Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Joshua Greer on behalf of Town of Huachuca City
- Charles Cahoy on behalf of the City of Phoenix
- William H. Anger on behalf of the City of Mesa
- Jeremiah D. Weiner on behalf of the Tonto Apache Tribe
- Alexandra Arboleda observing on behalf of City of Flagstaff
- Jenny Winkler on behalf of City of Chandler
- Clyde Halstead on behalf of City of Prescott

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

Discussion is held regarding the trial. While the Court previously advised that this matter would be held through Court Connect/Microsoft TEAMS, there have been difficulties attaching the water cases to the platform, so the Court may proceed with the GotoMeeting platform instead. The Court will send out the notice/meeting information via email by Friday afternoon.

Mr. McGinnis makes a general relevance objection that is a continuing objection to all of the exhibits to be introduced at trial on the grounds that the designated issue is a pure issue of law and no material issues of fact exist or can exist with regard to that pure issue of law.

IT IS ORDERED overruling the relevance objection.

Oral Argument is held on GRIC’s Motion in Limine to Exclude the Testimony of Mark Cross. The Court has concerns about whether Mr. Cross has the necessary expertise to opine about the reasonable beliefs that a person may have about whether a well is pumping subflow or, alternatively, whether testimony about the reasonable beliefs that may be held by a well owner are within the scope of expert testimony, which is not admissible when the subject of the inquiry is one requiring only common knowledge available to persons with an ordinary education.

Mr. Burnside addresses the Court regarding the scope and basis of the expert witness’ opinion.

IT IS FURTHER ORDERED granting the Motion in part and denying in part. Mr. Burnside shall submit a redacted expert report, striking the middle paragraph on page 1, the last sentence of the first paragraph on page 14, and the last sentence on page 15 all of which express Mr. Cross’ opinion about the beliefs held by well owners.

Mr. Murphy addresses the Court regarding his Motion to Take Judicial Notice. He states there are facts in the documents listed that are relevant to legal issues in this case.

Mr. Hood objects to the Motion for failure to comply with Rule 201 and lack of disclosure. He states there is no dispute that the wells operated by the Cavenders and one of the wells operated by the Town of Huachuca are in the subflow zone.

Mr. Greer agrees with the position of Mr. Hood.

IT IS FURTHER ORDERED taking the Motion to Take Judicial Notice under advisement.

IT IS FURTHER ORDERED that counsel confer Friday, April 23, 2021, and confirm the witness list and schedule.

2:09 p.m. Matter concludes.

LATER:

Motion to Take Judicial Notice

Based on the positions taken at the oral argument, the remaining issue is whether judicial notice should be taken of the Order issued by Judge Ballinger in Contested Case W1-103 (filed September 28, 2005) (“Order”). Judicial notice may be taken of a court record in another action filed in the same court, but judicial notice is not mandatory. *State v. Palomarez*, 134 Ariz. 486, 489, 657 P.2d 899, 902 (App. 1982). Gila River Indian Community (“GRIC”) argues that judicial notice should be taken of the Order so it may use the Order to impeach Charles Dickens at the trial. The Order does not reference Charles Dickens by name. The Gila River Indian Community does not identify the fact or statements contained in the Order that it seeks to use for impeachment. Thus, based on the information provided, the Order is not an appropriate subject for judicial notice. The scope of permissible judicial notice is limited. A court may take judicial notice of procedural facts included in the record of another action but it may not take “judicial notice of the truth of testimony received in that other action.” *State v. Lynch*, 115 Ariz. 19, 22, 562 P.2d 1386, 1389 (App. 1977).

In *State v. Palomarez*, *supra*, the appellate court upheld the trial court’s refusal to take judicial notice of a prior mental health hearing on the additional ground that the defendant had not complied with the applicable disclosure requirements. Similarly, in this case, GRIC did not timely disclose the Order as required by Ariz. R. Civ. P. 26.1. Accordingly,

IT IS ORDERED denying the Motion to Take Judicial Notice.

Evidentiary Objections

Neither the Joint Pretrial Statement nor the Final Exhibit List contained any objections to exhibits based on foundation or authenticity. Thus, no foundation or authenticity objection may be made at trial to the admissibility of an exhibit. There is a continuing relevance objection to all of the exhibits. Similarly, no relevance objection may be made to any exhibit at the trial on the grounds cited by SRP because that objection has been made, ruled upon, and is preserved. To the extent that the parties can stipulate to the admission of exhibits, a list of such exhibits will be provided at the beginning of the trial. A stipulation does not waive a relevance objection unless the stipulation specifically states that the relevance objection is waived.

GoToMeeting Information for trial April 26, 2021 – April 30, 2021

<https://global.gotomeeting.com/join/400975765>

You can also dial in using your phone.

United States: [+1 \(571\) 317-3112](tel:+15713173112)

Access Code: 400-975-765

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com

Meeting ID: 400 975 765

Or dial directly: 400975765@67.217.95.2 or 67.217.95.2##400975765

All participating parties will be expected to appear on GoToMeeting.

In addition the general public may hear the trial 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 for Contested Case Number W1-11-0245.