

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/15/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

A. Hatfield

Deputy

In re: St. David Irrigation District
Contested Case No. W1-11-1675

FILED: 08/21/2019

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

Courtroom: CCB 301

1:30 p.m. This is the time set for a status conference before Special Master Susan Ward Harris.

The following attorneys appear in-person: David Brown and William Staudenmaier on behalf of St. David Irrigation District and Mark McGinnis on behalf of Salt River Project ("SRP").

The following attorneys appear telephonically: John Burnside on behalf of BHP Copper; Charles Cahoy on behalf of City of Phoenix; Lucas Christian on behalf of Tonto Apache Tribe; Carla Consoli on behalf of the Arizona Chapter of the Nature Conservancy; Laurel Herrmann on behalf of San Carlos Apache Tribe; Susan Montgomery on behalf of Yavapai-Apache Nation; Kimberly Parks on behalf of Arizona Department of Water Resources ("ADWR"); and Bradley Pew on behalf of ASARCO.

Court reporter, Terry Masciola, is present and a record of these proceedings is made digitally.

The Court listed three issues to discuss at today's status conference: 1) Identification of parties to be included in the case; 2) St. David Irrigation District's proposed procedure to try its claims for water rights; and 3) Proposed schedule for discovery, motions, and trial.

Parties

The Court had provided to the parties a list of all the contested cases related to the Watershed File Reports (“WFRs”) that ADWR identified as within the external boundaries of the land recently annexed into the St. David Irrigation District. The Court inquires if additional contested cases from that list need to be consolidated with this case.

Mr. Brown states that he has not had the opportunity to review the list provided by the Court. Discussion is held regarding contested cases that have already been dismissed or stayed and 42 cases that have never been initiated.

Further discussion is held regarding ADWR’s list of new WFRs encompassed within St. David Irrigation District’s boundaries.

Mr. Brown states that if a contested case associated with a WFR for the newly expanded areas does not include parties that specifically joined the St. David Irrigation District in the new expanded area, the contested case should not be consolidated with this case.

IT IS ORDERED that counsel for St. David Irrigation District shall review the list of contested cases provided by the Court and examine the map prepared by ADWR showing the location of the WFRs included in the boundaries of St. David Irrigation District. St. David Irrigation District shall file a report by **September 13, 2019** identifying any contested cases not yet consolidated with this case that should be initiated and consolidated.

The Court notes that no statements of claimant (“SOCs”) have been filed by any landowner for a right to water for several parcels of land that are the subject of watershed file reports. The Court inquires if St. David Irrigation District takes the position that even when the individuals never filed a SOC that the amended SOC filed by the St. David Irrigation District is broad enough to make a claim for a water right in those cases. Mr. Brown responds that generally the St. David Irrigation District filing can encompass the uses within the District.

The Court states that it has received returned mail for eight landowners sent to their last known addresses and intends to delete the names from the Court-approved mailing list rather than engage in the futile exercise of continuing to send mail to undeliverable addresses. The Court asks Mr. Brown if these parties are represented by St. David Irrigation District. The parties and last known addresses are as follows:

David & Patsy Young P.O. Box 1266 Benson, AZ 85602

Bert & Frances Goodman Leslie P.O. Box 64, St. David, AZ 85360

Jeff & Guy Group LLC P.O. Box 295 Taylor AZ 85939

Jason Fletcher 6201 W. Olive Ave #2241, Glendale, AZ 85302 and 7007 W Indian School, Phoenix, AZ 85033

Wallace East Box 494 Pomerene, AZ 85627

Charles & Joanne Kartchner Drawer AX Benson, AZ 85602

Mark & Robin Deskins, 704 Lee Street St. David, AZ 85630

Laren D. Judd, 704 S Lee STR, St. David, AZ 85630

Mr. Brown is to review the list with his client to determine if they are represented landowners and report to the Court by **September 13, 2019**.

Discussion is continued regarding the Court-Approved Mailing List “(CAML)” and whether the Court should send a notice to people on the CAML asking if they want to remain on it or be removed. The Court notes that there was an objection earlier by Mr. Sparks to this procedure.

Ms. Herrmann has no objections to giving people notice and allowing them the option to remove themselves from the CAML.

There being no objections from the parties in the courtroom and on the telephone,

IT IS FURTHER ORDERED that the Court will send a notice to the parties on the mailing list and give them the option to be removed from the CAML by submitting a letter to the Court. Thirty days after the deadline for submitting a letter requesting removal from the CAML, the Court will file the letters with the Clerk of the Court and distribute copies of the letters to all the parties.

Procedure to try the claims for water rights

The Court notes that the parties are generally in agreement with St. David’s proposed procedure to try three issues in the first phase of the case. The issues are: (1) The correct methodology to determine the amount of water used for irrigation and the quantities used for irrigation; (2) Whether water rights with a priority of date prior to 1919 are subject to forfeiture; and (3) The identification of the points of diversion. Discussion is held.

Mr. McGinnis advises the Court that SRP is not currently planning to participate in the third issue concerning points of diversion. SRP will be participating in the other two issues: quantification (methodology and amount) and forfeiture.

There being no objections from the parties in the courtroom and on the telephone,

IT IS FURTHER ORDERED that the Court adopts St. David's proposed procedure to limit the first phase of the trial to the three issues identified by St. David Irrigation District in its *Proposed Initial Litigation Schedule*, filed June 27, 2019 at 3-4.

Proposed schedule

Further discussion is held regarding the schedule proposed by the St. David Irrigation District. Mr. Brown suggested a scheduling conference should occur after the completion of discovery. The Court inquires if the scheduling conference should occur before or after the due date for dispositive motions which is May 29, 2020. Mr. Brown expresses no preference.

Mr. McGinnis addresses SRP's petition pending before the Arizona Supreme Court concerning whether water rights with a priority of date prior to 1919 are subject to forfeiture and responds to the Court's questions regarding the correct procedure to address an issue that is simultaneously listed as an issue to be determined in this case and is the subject of a petition filed with the Arizona Supreme Court.

1:48 p.m. Matter concludes.

LATER:

IT IS FURTHER ORDERED that the following schedule shall apply to the first phase of the St. David Irrigation District contested case:

November 15, 2019. St. David Irrigation District shall disclose its expert opinions relevant to the three issues designated for the first phase of the trial.

December 31, 2019. St. David Irrigation District shall submit a Settlement Report.

January 14, 2020. Objectors shall disclose their expert opinions relevant to the three issues designated for the first phase of the trial.

March 16, 2020. St. David Irrigation District shall disclose its rebuttal expert opinions relevant to the three issues designated for the first phase of the trial.

April 30, 2020. Final day to complete discovery.

May 14, 2020. Pretrial conference at 1:30 p.m. to be held at the Maricopa County Superior Court, Courtroom 301, Central Court Building, 201 West Jefferson, Phoenix, Arizona 85003.

Instructions for telephonic appearance:
Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)

Dial Participant Pass Code 357264#

May 29, 2020. Final day to file dispositive motions relevant to the three issues designated to be determined in this case. Responses to dispositive motions shall be filed on or before the 40th calendar day after the date the motion is filed. Replies shall be filed on or before the 20th calendar day after the date the Response is filed. The last day of the period shall be included unless it is a Saturday, a Sunday or a legal holiday in which event the period run until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. No additional days shall be added to the filing dates for Responses or Replies to account for mailing times.

January 19, 2021. Trial to begin at 10:30 a.m. in the Maricopa County Superior Court.

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