

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY AND APACHE COUNTY

June 23, 2023

CLERK OF THE COURT

SPECIAL WATER MASTER
SHERRI ZENDRI

T. DeRaddo
Deputy

6/26/2023

Consolidated/Contested Case Numbers:

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 Cases

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

CV 6417

In re: Status Conference

MINUTE ENTRY

Courtroom CCB - 301

1:30 p.m. This is the time set for a Status Conference to continue the discussion about the most reasonable and efficient scheduling of the next HSR and related technical reports to be requested from ADWR.

The following attorneys appear virtually/telephonically via Court Connect/Teams.

- Kome Akpolo on behalf of the Arizona Department of Water Resources (“ADWR”)
- Kevin Crestin on behalf of The Arizona State Land Department
- Vanessa Williard on behalf of the United States
- David Gehlert on behalf of the Federal Proprietary Agencies
- Katya Lancero on behalf of the Navajo Nation

- Phillip London on behalf of the Hopi Tribe
- Joe Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Sue Montgomery and Robin Interpreter of behalf of the Yavapai Apache Nation and observing on behalf of Pascua Yaqui Tribe
- Anthony C. Proano on behalf of the Tonto Apache Tribe
- Thomas Murphy on behalf of the Gila River Indian Community
- Brian Heiserman on behalf of the LCR Coalition
- Jeff Perkins on behalf of the LCR Coalition and on behalf of the Gila Valley Irrigation District, The Franklin Irrigation District (and others in both adjudications)
- Mark McGinnis and Michael Foy and John Weldon on behalf of Salt River Project (“SRP”)
- Bradley Pew observing on behalf of American Smelting and Refining Company (“ASARCO”)
- John Burnside of the Arizona Public Service Company and BHP Copper
- Sean Hood on behalf of Freeport Minerals Corporation
- Carla Consoli on behalf of the Nature Conservatory
- Lee Storey and Luke Erickson on behalf of the City of Flagstaff and on behalf of the Town of Prescott and the Verde River
- Michael Roland for the cities of Avondale, Glendale, Mesa, Tempe, and Scottsdale
- Charles Cahoy on behalf of the City of Phoenix
- Wayne Sullivan on behalf of the Town of Wickenburg
- Steve Wene on behalf of the City of Safford
- Also present were Jonathan Charlton, Jennifer Wendel, Lisa Dubas, Maggie Woodward, Lisa Dubas, Alexandra Arboleda and Gehret Perkins

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

The purpose of today’s Status Conference is to continue the discussion about the most reasonable and efficient scheduling of the next HSR and related technical reports to

be requested from ADWR.

Kome Akpolo reminds the Court that Special Master Harris issued an Order on February 22, 2023 requesting that ADWR file a report that addresses the amount of time required by ADWR and the expected cost that would normally be payable to a third party to prepare technical reports re either a joint sub flow zone report or separate reports for the Upper Salt River, Upper Gila River and the Upper Little Colorado River Watershed.

ADWR filed the report in May, 2023. ADWR has recommendations on the best way to proceed. Mr. Akpolo states that it is not recommended to attempt to combine all three watersheds at the same time. Mr. Akpolo believes that the parties should meet and confer to decide on how they would prefer to proceed. Currently the timeline for the reports would go through 2034.

Mark McGinnis believes that with respect to the first 4 or 5 recommendations that ADWR has made in its report, SRP has no objection to them, specifically not combining the work on the three sub flow reports, working on the Little Colorado River next, finishing up the reports on the San Pedro next and then working on the Upper Little Colorado River. He believes that ADWR is also working on the Verde River that is under way, and he is of the opinion that it should continue.

Mr. McGinnis states that the primary issue at this time is that ADWR has redrawn boundaries of the watersheds that were in place for decades. SRP now has to determine the best way to work with this. That concern mostly relates to the Phoenix area.

Mr. McGinnis has maps that show where the old boundaries were and where the new boundaries have been drawn. He was unable to show them during the hearing, but states that he will file them in both adjudications. Mr. McGinnis explains on the record how the new boundaries will affect the HSR reporting. Under the new boundaries, there would be four separate watershed reports, and four separate HSR proceedings, which Mr. McGinnis believes would be unmanageable. Further, when a storage right is indicated in the reports and on the maps, the water use must be shown. This would mean that there would be storage rights in one watershed and the uses in another. They are all in the same river system, but they would be litigated separately.

There are cities whose city limits straddle the project boundaries and the boundaries of the Salt HSR boundaries that ADWR has drawn. Some of the cities would have a portion of their rights from SRP litigated in Salt and other portion of their rights litigated in a different watershed. The cities also have portions of their cities that aren't in the project that would be litigated separately. Because the areas are so interconnected, in 1986, Judge Goodfarb recommended that a Salt River Valley HSR should be done.

Mr. McGinnis suggests that there are a few ways to proceed:

- Work on the Salt River Project and related uses HSR separately and have those all

- in one place.
- Take the boundaries of the Salt HSR and include all of those uses in the valley areas.
 - Take the boundaries of the HSR and cover all of Phoenix, cover all of Scottsdale, cover all of the project, cover Roosevelt Irrigation District, cover Buckeye, and essentially, make it valley wide.

Discussion is held regarding Footnote 9 in ADWR's report.

Joseph Sparks discusses Judge Goodfarb's 1986 Pretrial Order No. 1 (modified in 2005) in the Gila Adjudication regarding the upper reaches of the Salt Upper, Silver Creek and Gila Rivers. Mr. Sparks states that counsel have been planning on and working with that schedule. He prefers to maintain the status quo. Mr. Sparks states that he would like to see the maps that show where the lands are of the various reservoir districts and who services them, and where the towns receive water from the different projects. He discusses the Horseshoe District and the Bartlett in the Verde System; and the other four Salt River Dams. He states that at the Granite Reef the water eventually is "homogenized."

Charles Cahoy states that he concurs with some of the concerns that Mr. McGinnis raised regarding ADWR's new approach and map and its failure to treat the Salt River Valley metro area comprehensively and cohesively. Mr. Cahoy states that if one were to look at Judge Goodfarb's 1986 Special Rule of Proceeding No. 1, it specifically states that there would be HSRs for the Lower Gila sub watershed, which at that time included most of the metro area. There would be an HSR for the Salt River Project and some of the other irrigation districts that receive water from SRP; and there would be another HSR for the Salt River Valley municipalities. Thus, the metropolitan area would be treated comprehensively. He is concerned about the City of Phoenix water service area itself. As a municipal water user, some of the appropriate rights are usable anywhere in the municipal water service area. Under ADWR's new map, it has divided the City of Phoenix into three different watersheds. Mr. Cahoy supports the original concept and the suggestions that Mr. McGinnis made.

Mr. Roland concurs with the concerns made by the City of Phoenix and SRP. Regarding the cities that he represents, each of the cities would be split among two to three different watersheds. He does not believe that splitting off claims among the different watersheds is not practicable. Mr. Roland states that the dividing of the watersheds among the cities is a legal matter and not a scientific proceeding. Everyone is called to consider the ramifications on the legal process. He is in favor of reinstating the old map.

Sue Montgomery states that due to the fact that one area in the river affects the other areas, she is in favor of briefing the issues.

Mr. Heiserman concurs with the schedule set forth by ADWR. He believes that all parties should have an opportunity to review in writing the recommendations of the other parties and the opportunity to respond.

Lee Storey also would like the opportunity to brief the issues raised in today's conference. Ms. Storey states that there are six years' difference between the Lower LCR sub flow and the Upper LCR sub flow. Ms. Storey states that there will be similar data that will be used to identify pre-development conditions in both locations. She believes that the 6-year difference would be a situation where information and data starts and stops, and would not be the best use of time.

Ms. Storey states that one of the watersheds that is not on the map is the Upper Santa Cruz River. There has been work on this in the active management area. Ms. Storey informs that there may be a proposal for the Court to consider in the area where most of the work has been done, to identify the attributes thereto. There are at least 200 different claimants in the active management area, although there are areas in the Santa Cruz watershed that have not been identified and articulated.

Ms. Montgomery states that the Yavapai Apache Nation has a strong disagreement with the ADWRs recommendation #5 in their report. That recommendation would have the Apache Nation's water rights and the United States in the Nation's behalf in the Verde River Watershed. The Nation is in the Lower Verde Valley. Ms. Montgomery asserts that the report does not address the Yavapai Apache Nation's water rights in the Lower Verde Valley until sometime after 2031. She further states that the Nation's claims should have been included and were included by Special Master Harris in the Order for ADWR's HSR in the Lower Verde Valley (by 2028).

Ms. Montgomery states that when the original process with Special Master Harris in deciding how to adjudicate the five sub water sheds in the Verde, the Yavapai Apache Nation and the Tonto Apache Tribe briefed in detail the reasons why they should be included in a single HSR. Special Master ordered that this be accomplished together. The Yavapai Apache Nation also has irrigation ditch rights. Ms. Montgomery states that until the Nation's water rights have been adjudicated, they cannot enforce their rights.

Ms. Montgomery states that there are more issues to discuss, and she is in favor of briefing these issues.

Anthony Proano states that the Tonto Apache Tribe concurs with the statements made by Ms. Montgomery on behalf of the Yavapai Apache Nation. Mr. Proano disagrees with any Order that would put the tribes into a separate HSR. Mr. Proano is in favor of briefing these issues.

Tom Murphy states that one of the concerns of the Gila River Indian Community is the order of the adjudications in ADWR's work. With regard to the Upper Gila water shed, the Community contends that it has jurisdiction to draw a sub flow zone for the tributaries, not the Gila mainstem. He states that the Arizona Supreme Court has already held that the Gila Decree is comprehensive as to the mainstem of the Gila River. Mr. Murphy informs the Court that the Federal Court has exclusive jurisdiction over the mainstem rights over the Gila River and over issues such as whether wells are pumping the sub flow of the Gila River. The issue of the sub flow zone of the Gila River is pending in the Federal Court. Mr. Murphy believes that any order that is issued from the General Adjudication as to the Upper Gila may indicate that any sub flow zone or

adjudication would be only for the tributaries and not for the mainstem. Mr. Murphy is in favor of briefing these issues, as well.

The Court states that forthcoming is a briefing schedule.

Phillip London requests to have a set of initial briefing and a time for responsive briefing.

Sean Hood disagrees with Mr. Murphy regarding the jurisdiction issue. He agrees with Mr. London about the need for two rounds of briefing.

Katya Lancero concurs with the need for written briefing.

Vanessa Willard, on behalf of the United States on behalf of the tribes, concurs with Mr. Murphy about the federal court's jurisdiction in the mainstem Gila River. Ms. Willard states that the United States would like to lend its support to the Yavapai, Apache and Tonto tribes that the tribes' rights should be included in the Verde River HSR.

Carla Consoli concurs with the sentiments of Mr. McGinnis.

Gehret Perkins, on behalf of the irrigation districts that he represents, agrees with ADWR's timeline as presented in Appendix A. He concurs with Mr. Murphy regarding jurisdiction.

2:30 p.m. Matter concludes.

LATER:

IT IS ORDERED that Parties should file briefs of no more than 10 pages (single sided) with any written comments and/or proposals to the Court by **Friday, September 1, 2023**, with any responses due by **Friday, September 29, 2023**. Comments should focus on the most fair and efficient method to adjudicate the claims of water systems that potentially span across multiple watersheds.

IT IS FURTHER ORDERED that any Party providing water services of any type to customers, provide to the Court a map of their service areas by **Friday, September 1, 2023**.

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.

A copy of this order is mailed to all parties on the Court-approved mailing list for these contested cases.