

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/18/2018

CLERK OF THE COURT

Form V000

SPECIAL WATER MASTER
SUSAN HARRIS

S. Brown
Deputy

In re Luebbermann Contested Case No. W-1-11-3311

FILED: 8/6/2018

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

Re: Status Conference

MINUTE ENTRY

CCB-301

11:04 a.m. This is the time set for a status conference before Special Water Master Susan Harris.

The following attorneys and parties appear in person: David Brown on behalf of the Steve and Jane Turcotte of the Turcotte Family Trust, and David Rychener and Joyce Skeldon who are Successors in Interest of the In re Luebbermann claims; Brad Pew on behalf of ASARCO; Mark McGinnis, Jeffrey Heilman, and Patrick Sigl on behalf of SRP.

The following attorneys appear telephonically: John Burnside on behalf of BHP Copper; Joe P. Sparks on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe; Yosef Negose on behalf of the United States; Jay Tomkus on behalf of the Pascua Yaqui Tribe and Yavapai-Apache Nation; and Kimberly R. Parks on behalf of the Arizona Department of Water Resources.

Court reporter Scott Kindle is present, and a record of the proceedings is also made digitally.

Mr. Brown addresses the status of approval of the abstracts prepared by the Court. His clients have no objection to the changes in location for irrigation made by ADWR. Discussion is held regarding comparisons between the mapping provided by ADWR and Mr. Brown's firm. The township and range lines and property boundaries are not included on the maps submitted by Mr. Brown.

The Turcotte and Rychener Statements of Claimant (SOCs) and basis of rights are clarified. Mr. Brown states that the only relevant SOC is 39-00603. He further stated that there should be two 55 filings for the Turcottes and one 55 filing for Rychener based on the amended SOC for the irrigation claims listed under "basis of right".

The Court stated that the coordinates for wells and instream pumps should be included in the abstracts for points of diversion.

Mr. Turcotte will take GPS locations of the corners and relevant curves of the mapped irrigated areas which will be added to Mr. Brown's map. Mr. Brown advises his clients' Amended SOC include information as to the domestic uses for both parties, but no abstracts have been created for the domestic uses. There are two wells that provide water for domestic use for the Turcottes and three wells that provide water for domestic use for Rychener. The wells are shown on the maps provided by Mr. Brown.

Mr. McGinnis stated that he has no objections to the creation of abstracts for stock watering in this case, but there are some difficulties with creating a PWR for a water right that was not included in the WFR, but in this case it appears to have been an oversight by ADWR to omit the water right because stock watering is mentioned in the WFR.

SRP and ASARCO join in Mr. Brown's recommendations regarding the abstracts and have no objections to the issuance of an abstract for stock watering or to Mr. Brown's revisions to the maps.

Mr. Sparks states that he has not seen the maps that Mr. Brown produced in court. Discussion is held regarding Mr. Sparks' objections to the abstracts and his request to include a quantity designated for stock watering and a rate of diversion for the diversion points as part of the attributes of the water right. Mr. Sparks addresses his objection based on the lack of information regarding the succession of title from the original homestead. He also questioned the validity of the priority date and possible non-use. Deeds may show an intent to transfer water right. After determination of the chain of title and review of deeds and review of and integration of Mr. Brown's maps with those of ADWR including ownership, Mr. Sparks' clients have no further objections. Mr. Negose joins with Mr. Sparks' objections.

Mr. Brown addresses Mr. Sparks' objections and the chain of title issue. He reports that he contacted Lawyer's Title to request chains of title and was informed they no longer provide these and that it would cost claimants a great deal of money to have chains of title done.

Discussion ensues regarding how to resolve the chain of title issue and whether the Court should designate it as an issue of broad legal importance. Mr. Sparks states that the objections previously filed are that the public record does not support the priority date shown in the WFR.

Mr. Brown will prepare the maps in accordance with the revisions discussed today. The Court will revise the abstracts as discussed and, upon receipt of the maps from Mr. Brown, will distribute the maps and abstracts to all parties.

IT IS ORDERED that within 30 days after distribution of the maps, Mr. Sparks shall brief the issue of chain of title as it applies in this case and to these parcels. Upon receipt of the briefing, the Court will consider whether to designate this issue as an issue of broad legal importance.

Mr. Sparks raised the issue as to whether these parcels should be considered as part of the settlement track. Mr. McGinnis responded that settlement should wait until Mr. Sparks files his briefing on the chain of title issue. Mr. Sparks said that there is no evidence about the parties' priority date claimed. Mr. Brown said that the evidence is the homestead affidavit and the patent. Mr. Sparks said that he has not been provided with those documents and that they are not yet in the record.

Mr. Brown will provide a copy of the amended 36 filings to Mr. Sparks and Mr. Negose that include the exhibits. Mr. Barry reports the United States has not been consistently receiving the Court's orders for these conferences and he provided a mailing address to the Court.

Mr. Brown will electronically transmit his maps to ADWR so the maps can be overlaid to include the addition of township, range and property boundaries.

11:57 p.m. Matter concludes.

LATER: ADWR will file with the court the maps it receives from Mr. Brown as revised as discussed above no later than 30 days after receipt.

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