

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/04/2018

CLERK OF THE COURT

Form V000

SPECIAL WATER MASTER
SUSAN HARRIS

L. Stogsdill
Deputy

In re: Instream Flow, Contested Case
No. W-1-11-3301

FILED: 04/10/2018

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

1:34 p.m. This is the time set for a status conference before Special Water Master Susan Harris.

Court reporter Mike Benitez is present and a record of the proceedings is also made digitally.

The following attorneys and parties appear in person: Monique Coady on behalf of the City of Phoenix, Carla A. Consoli and Scott M. Deeny on behalf of the Arizona Chapter of Nature Conservancy; Mark A. McGinnis and R. Jeffrey Heilman on behalf of the Salt River Project.

The following attorneys appear telephonically: Joe P. Sparks on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe and Kimberly R. Parks on behalf of the Arizona Department of Water Resources.

Ms. Consoli advises the court that there are 4 certificated in-stream flow rights for reaches A, B, C and D. The Nature Conservancy intends to continue with those 4 certificated in-stream flow rights and use them as they are currently certificated.

Discussion is held regarding minor discrepancies in amounts between the certificated rights and the consolidated abstracts filed. The court stated that the amounts listed in the certificated in-stream flow rights will be used in the proposed abstracts for water rights. Counsel agreed.

The court notes that this case includes WFR 115-50-050 which contains both potential water rights for domestic uses and stock watering uses. Four Statements of Claimants are associated with those uses but the amended consolidated set of abstracts filed by TNC did not include any claims listed in WFR 115-50-050.

Ms. Consoli confirms that fact with the court.

For the reasons stated on the record,

IT IS ORDERED that Statements of Claimant 39-5505, 39-5510, 39-5519 and 39-5520 are dismissed.

IT IS FURTHER ORDERED that there are no water rights awarded pursuant to WFR 115-50-050. No further action will be taken with respect to WFR 115-50-050 because all claims included in the watershed file report have been dismissed.

No objections are noted.

Discussion is held regarding the certificated claims and the resulting abstracts for in-stream flow which appear to be consistent with the exception of the discrepancies noted above.

Ms. Consoli agrees with the court.

The court further notes that Salt River Project filed no objections with regard to those WFRs.

Mr. McGinnis agrees with the court.

The court advises counsel that the existing process regarding these matters is for the court to prepare the abstracts which would then be included in a catalog to be submitted to the Superior Court once it has been circulated to all of the parties.

Mr. Sparks raised a due process concern that when there is a material change in the statement of claimant then notice should be provided to all parties in the basin who were in the original HSR.

The court inquires if Mr. Sparks is referring to the claims regarding *de minimis* uses and domestic claims filed in WFR 115-50-050 which have been dismissed.

The court asks counsel if they believe there is a need to send the proposed abstracts to the entire sub-basin and then also provide them to the superior court to be reviewed as a group.

The court further notes that in the past that there has been at least one case sent to the Superior Court requesting issuance of a final decree. This process appears to be inconsistent with the Rules for Proceedings Before the Special Master and the pre-trial order. A procedural problem may also exist between the court rules and the pre-trial order and the new statute.

Mr. Sparks stated that to the extent that the legislature invades the province of the court it violates article 3 of the constitution. The legislature cannot dictate the order in which these rights are adjudicated.

Mr. McGinnis advises the court that pursuant to Rule 8.04[2] other parties can raise an objection to the settlement only if they can show they were unable to raise an objection previously. Mr. McGinnis felt that the abstract should be provided to those listed on the court-approved general mailing list for W1, W2, W3 and W4.

The court questions that rather than call the result a settlement, the court could issue findings of fact and conclusions of law. Mr. McGinnis believes that the court wouldn't be ruling on the objections in this case because the parties withdrew their objections.

Discussion is held regarding distributing abstracts, including them into a catalog for objections by parties or resolving by final decree.

Ms. Consoli advises the court that she will re-formulate the table however the court would prefer.

For the reasons stated on the record,

IT IS ORDERED the court will circulate proposed abstracts to the parties in this contested case and allow 60 days for suggested corrections to typographical or clerical errors only.

1:53 p.m. Matter concludes.

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