

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

October 5, 2023

CLERK OF THE COURT
A. Parmar
Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

In Re The General Adjudication of
All Rights to Use Water in the Gila
River System and Source
W-1, W-2, W-3, W-4 (Consolidated)

FILED: October 18, 2023

In re: Orié Alvin Woens, Sr et al.
Contested Case No. W1-11-2081

MINUTE ENTRY

Courtroom 301 – Central Court Building

1:30 p.m. This is the time set for Status Conference before Special Water Master Sherri Zendri.

The following parties/attorneys appear virtually through Court Connect:

- David Brown and Garrett Perkins on behalf of St. David Irrigation District (“SDID”)
- John Burnside on behalf of BHP Copper and St. David Irrigation District (co-counsel)
- Mark McGinnis and Katrina Wilkinson on behalf of Salt River Project (“SRP”)
- Joe Sparks, Alexander Ritchie and Laurel Hermann on behalf of the San Carlos Apache Tribe
- John LeMaster on behalf of City of Chandler
- Maggie Woodward and R. Lee Leininger on behalf of the United States proprietary agencies

- Dan McCarl on behalf of the United States (in its trust capacity on behalf of tribes)
- Brad Pew on behalf of American Smelting and Refining Company (“ASARCO”)
- Charles Cahoy observing on behalf of the City of Phoenix
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Kent Millward on behalf of the Tonto Apache Tribe
- Sean Hood on behalf of Freeport Minerals
- Thomas Murphy on behalf of the Gila River Indian Community

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

LET THE RECORD FURTHER REFLECT that this hearing is being held in conjunction with W1-11-2089, W1-11-2090, W1-11-2111, W1-11-2119, W1-11-2127, W1-11-2128 and W1-11-2131.

The Court notes that the other parties are not in agreement with Mr. Brown’s proposal to remove contested cases W1-11-2127 and W1-11-2131 from the list of contested cases to be included in the first set of St. David Irrigation District (“SDID”) cases to be adjudicated.

Mr. Brown addresses the Court regarding his proposal and the responses. He reports that he does not have the documents from the National Archives and is unable to move forward on some of the cases without the documents. He believes the best way to proceed is to proceed on the current litigation schedule for the six cases that are ready.

Mr. Sparks addresses the Court regarding the concerns of the San Carlos Apache Tribe. He does not believe that the Court should delay the adjudication for lack of documents from the National Archives.

Discussion is held regarding the National Archives.

Mr. Brown addresses the Court regarding his proposal to proceed with six cases instead of eight. He anticipates that once the Court has determined the legal issue of calculating the priority dates and point of diversion, many of the remaining cases will be able to settle.

Mr. McCarl addresses the Court regarding the SDID’s proposal for the six cases instead of the eight cases. He doesn’t believe that SDID has given good cause to eliminate the adjudication of all eight cases. The US prefers to proceed under the existing schedule. He notes that Mr. Brown asked for a delay of up to nine months to try all eight cases, the US would be agreeable to a three month delay.

Mr. Pew reports that ASARCO does not oppose or support the SDID’s proposal but he does agree with the comments made by Mr. Brown today.

Based on the matters presented,

IT IS ORDERED granting in part the SDID's *Motion for Clarification Regarding Initial Group of Contested Cases* filed August 17, 2023. The Court will grant the request to exclude W1-11-2127 and W1-11-2131 (WFR numbers: 112-17-DBB-21 and 112-17-DBB-37) in their entirety from the first batch of cases.

IT IS FURTHER ORDERED affirming the current litigation schedule. The Court will not grant any further extensions to the current schedule.

The Court notes that this will be the last time that it will entertain a delay for lack of documents from the National Archives (for the St. David cases). The Court received an email a few months ago that the National Archives are now open and fulfilling requests within six months. Some requests may have been lost and may need to be resent.

Mr. Sparks requests that the Court not limit the issues to the three mentioned by the Court. The Court clarifies that it is not limiting the issues in this adjudication.

Mr. Brown requests that all parties send a courtesy copy of filings by email as they did in the Navajo Nation's and Hopi Tribe's cases.

Mr. Sparks expresses concerns about service by email. The Court clarifies that the electronic copy will be a courtesy and in addition to the hard copy filing and mailing for service and will not affect any deadlines on the official hard copy filings.

IT IS FURTHER ORDERED granting Mr. Brown's request. The parties shall send courtesy copies of filings by email, however; the date of service shall continue to be determined by traditional service (delivery of a hard copy).

Mr. Brown addresses the Court regarding the testimony/admittance of expert reports and whether they will be subject to hearsay objections. He informs the Court that he has circulated a proposed stipulation similar to what was done in the Navajo Nation's and Hopi Tribe's cases. He received comments from SRP and SRP and ASARCO have agreed to it. The United States believe the stipulation to be premature and would like to address it once discovery has been completed.

2:22 p.m. Matter concludes.

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