SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

December 2, 2022

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A Parmar
Deputy

FILED: January 18, 2023

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: San Pedro Riparian National Conservation
Area
Contested Case No: W1-11-232

MINUTE ENTRY

Central Court Building – Courtroom 301

2:18 p.m. This is the time set for a Status Conference before Special Water Master Susan Ward Harris for purpose of setting dates for discovery deadlines, dispositive motions, and trial to adjudicate the claimed water rights and the objections to the watershed file report.

The following attorneys and parties appear virtually through Court Connect:

- Brian Heiserman on behalf of Liberty Utilities, Bella Vista Water Company
- Sara Ransom on behalf of the City of Sierra Vista and Pueblo Del Sol Water Company, Susan R. Colby Living Trust and Rebecca R. Davis Living and Revocable Trust
- David Brown on behalf of Echoing Hope Ranch
- Carrie Brennan on behalf of the Arizona State Land Department
- David Gehlert on behalf of the United States
- Mike Foy on behalf of Salt River Project ("SRP")
- Joe Sparks on behalf of San Carlos Apache Tribe
- Sue Montgomery on behalf of Yavapai Apache Nation and observing on behalf of the Pascua Yaqui Tribe
- Kome Akpolo on behalf of Arizona Department of Water Resources ("ADWR")
- Rhett Billingsley on behalf of American Smelting and Refining Company ("ASARCO")
- John Burnside on behalf of BHP Copper

- Sean Hood on behalf of Freeport Minerals
- Jenny Winkler observing on behalf of the City of Chandler

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

Discussion is held regarding the United States' report. Mr. Akpolo stated that ADWR anticipates 60 to 90 days to review instream flow applications not involving flood flows and six months to review applications involving flood flow after receiving reports from United States.

Discussion is held regarding allowing the United States to amend Statements of Claimant filed by prior landowners. The United States reported that ADWR has agreed to United States' amending Statements of Claimant filed by predecessor landowners.

Carrie Brennan addresses the Court regarding her position on the amendment to the Statements of the Claimant. Ms. Brennan states that she believes that legally the United States should file a new Statement of Claimant. In this case, however, she states that she has no objection to an amendment so long as the only amendment is the ownership. If more material, substantive changes are being made, then SOC may not be properly handled at this point and should be addressed in San Pedro II.

Joe Sparks states that he would have to review the conveyance documents for the property to the United States to determine if an amendment is appropriate or a new claim must be filed.

Ms. Brennan stated that her concern goes to the materiality of any potential changes.

IT IS ORDERED approving the United States' plan to file amended Statements of Claimant by December 30, 2022. The Court further stated that the parties have preserved objections to the amended Statements of Claimant.

Discussion is held regarding conveyance documents to be provided by BLM and when they will be made available to the parties. ADWR will make the documents available as public records.

Sara Ransom joins in ASLD's position and reserves the right to object to the substance of the amendments to the Statements of Claimant.

Mr. Gehlert has not yet received assignments of SOCs from lessees.

Ms. Brennan states that in reading the United States' report and seeing that it is submitting reports from 2006 that were involved in litigation, she assumes that ADWR will make those reports available online and, because they were generated in litigation, she assumes there are other reports generated by objectors. She further assumes that she would be afforded the opportunity to submit data to ADWR to aid it in making its determination.

Mr. Gaylord said that the four reports that will be provided by the United States to ADWR are expert reports generated for the SPRNCA litigation. He said that ADWR is interested in the

USGS gage data on streamflow. He further stated that the United States would not object if ADWR wanted additional data/input from other parties.

Ms. Brennan says this situation presents a tension between the administrative in-stream flow certification process and the adjudication process. She does not believe that the administrative process is meant to supplant the adjudication process. Thus, once a certificated right is issued, the certificate is still subject to the adjudication process. Ms. Brennan states that she needs to make sure that her client can submit data to ADWR after she reviews the reports submitted by the United States.

Kome Akpolo states that ADWR was intending to review the reports submitted by the United States. He states that the three applications were noticed in 1990 and 1991. ADWR's current position is that no new notice is required at this point.

Brian Heiserman addresses the Court about the notice given in the application process is not equivalent to the notice in the adjudication process. He takes no position about whether additional notice is needed in the administrative position.

Rhett Billingsley agrees with Mr. Heiserman's comments and would like time to confer with his clients about the notice issue. As a general comment, given the length of time since notice given and that United States is providing updated flow data, it would probably be appropriate for ADWR to provide notice in the application/administrative process.

Ms. Brennan is concerned that without notice, people are getting left out.

Discussion is held regarding whether the Adjudication Court has authority to step into ADWR's administrative process and issue an order regarding notice.

Brian Heiserman addresses the Court and says that when the Adjudication Court is issuing a final water right there is a threshold question about whether the process that created the underlying support for that right included sufficient notice procedures.

Joe Sparks addresses the Court. He says that he would not like to see the lapse of time from the issuance of the original notice be the justification for requiring new notice. He said that he would defer to the state agency about the notice to be given in the administrative proceeding.

Sue Montgomery addresses the Court. She states that ADWR does not need to issue a new notice. To the extent that a party wants to challenge the validity of the instream flow claim presents a different question.

Brian Heiserman addresses the Court. He believes it is appropriate to allow time for the objecting parties to evaluate and object to the underlying claim in this proceeding. It is not appropriate for an objecting party to have no opportunity to challenge in any way a certificate or application that is being used as a basis in the adjudication.

Ms. Brennan states that Arizona State Land Department does know about this process and does have data and it will be submitting that data to ADWR.

The Court inquires as to the status of the claims in the following watershed file reports: WFR 111-20-DDA-023, WFR 111-23-DDA-004, WFR 112-17-DB-096. Mr. Gehlert will respond once he has evaluated the claims and determined what is outstanding.

2:59 p.m. Matter concludes.

LATER:

The attached schedule lists each contested case and watershed file report consolidated with this case along with information about the status of the statements of claimant filed by or assigned to Bureau of Land Management.

IT IS FURTHER ORDERED that the United States shall file a Fifth Report on the State Based Claims by **February 17, 2023** that:

1. Identifies whether it intends to pursue Statements of Claimant 39-4288, 39-4297, 39-5369, 39-12705, 39-12706, 39-12708, and 39-12710.
2. Identifies any corrections to the attached schedule it believes necessary to accurately represent the status of its claims for state water rights in SPRNCA.
3. Identify the Watershed File Report which includes an investigation of Statement of Claimant 39-6017 or the claims asserted in Statement of Claimant 39-6017.

IT IS FURTHER ORDERED that Statement of Claimant 39-370 is dismissed pursuant to the United States Fourth Report filed November 30, 2022.

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

WFR	Case No.	SOC	US pursuing	Dismissed	US further investigation	US status unknown	Draft Abstract Issued
111-20-032	W1-11-0232	39-674	x				x
		39-675	x				x
		39-676	x				x
		39-677	x				x
		39-678	x				x
		39-2612	x				
		39-2616	x				
		39-4276	x				
		39-4277	x				
		39-4289	x				
		39-4290	x				
		39-4291	X				
		39-4292	x				
		39-7752	x				x
		39-11232	x				x
		39-12689	x				
		39-12690	x				
		39-12691	X				
		39-13992	x				x
		39-13993	x				x
		39-13997	x				x
		39-14488		x			
		39-14503	x				x
		39-14504	x				x
		39-14505	x				x
111-20-065	W1-11-0252	None		x			
111-20-DD-001	W1-11-0419	39-11831		x			
111-20-DDA-023	W1-11-0441	39-6000	x				
111-23-AAA-001	W1-11-0629	39-370		x			
		39-372	x				
		39-371	X				
		39-373		x			
		39-671	x				
		39-4274	x				
		39-4275	x				
		39-4293	x				
		39-4294	x				

111-23-AAA-001 continued	W1-11-0629 continued	39-4295	x				
		39-4296	x				
		39-4297	x			x	
		39-4298	x				
		39-4301		x			
		39-12699	x				
		39-12705				x	
		39-12706				x	
		39-12707	x				
		39-12708				x	
		39-12710				x	
		39-12712	x				
		39-12715	x				
		39-13610					x
		39-13611	x				x
		39-13626		x			
		39-13627	x				
		39-13996		x			
		39-13998	x				x
		39-13999	x				x
		39-14506	x				x
		39-14507	x				x
		39-14508		x			
111-23-DDA-004	W1-11-1154	39-964		x			
		39-965		x			
		39-966		x			
		39-974		x			
		39-5369				x	
		39-5370		x			
		39-5371		x			
		39-5372		x			
		39-5373		x			
		39-11936		x			
		39-11937		x			
		39-11938		x			
		39-11942		x			
111-24-082	W1-11-1211	39-11919		x			
		39-12709		x			
111-24-CBB-002	W1-11-1343				x		

111-24-CBB-003	W1-11-1344	39-3796	x				
		39-3797	x				
		39-3798	x				
		39-3799	x				
		39-11030	x				
111-24-CBB-005	W1-11-1346	39-2258		x			
111-24-CCB-011	W1-11-1374	39-370		x			
		39-964		x			
		39-974		x			
		39-977		x			
		39-979		x			
		39-5373		x			
		39-11936		x			
		39-12713	x				
		39-13610					x
		39-14482	x				x
		39-14485	x				x
		39-14491		x			
112-17-063	W1-11-1655	39-0670	x				x
		39-0672	x				x
		39-4283		x			
		39-4286	x				
		39-4287	x				
		39-12692		x			
		39-13625	x				
		39-13628	x				x
		39-13994		x			
		39-13995	x				
		39-14489		x			
		39-14490		x			
		39-14501		x			
		39-14502		x			
112-17-DB-096	W1-11-2066	39-11037	x				
112-17-DCA-010	W1-11-2187	39-5471		x			
		39-5472		x			
112-17-DCD-001	W1-11-2193	None		x			
112-20-013	W1-11-2239	39-4288				x	
		39-12679		x			