

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

January 15, 2020

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER  
SUSAN HARRIS

L. Stogsdill

Deputy

In re: Town of Huachuca  
Contested Case No. W1-11-0245

FILED: February 20, 2020

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: Status Conference

**MINUTE ENTRY**

**Courtroom: CCB 301**

3:02 p.m. This is the time set for a Status Conference.

The following attorneys and parties appear in person:

Carrie J. Brennan for Arizona State Land Department  
David A. Brown for Mr. and Mrs. Cavendar and the City of Cottonwood  
John D. Burnside for BHP Copper  
Kevin P Crestin for Arizona State Land Department  
Mark A. McGinnis and Jeff Heilman for Salt River Project  
Sean Hood for Freeport Minerals  
William H. Anger for the City of Mesa  
Charles Cahoy for the City of Phoenix  
Steve Wene for the Towns of Huachuca and Stafford

The following attorneys and parties appear telephonically:

Lucas Christian for the Tonto Apache Tribe  
Robyn Interpreter for the Pascua Yaqui Tribe and Yavapai-Apache Nation  
Kimberly R. Parks for the Arizona Department of Water Resources  
Joe Sparks for the San Carlos Apache Tribe  
Thomas J. Murphy for the Gila River Indian Community  
Alexandra Arboleda for the City of Flagstaff

Court reporter, Luz Franco is present and a record of the proceedings is made digitally.

3:42 p.m. Matter concludes.

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

Mr. Wene provides the Court with a status update of the matter. A proposed scheduling order is discussed.

For the reasons stated on the record,

**IT IS ORDERED** consolidating this matter with *In re Whiting Ranches*, contested case no. W1-11-3397.

The Court inquires of David Brown if consolidating the cases will result in trying both cases at the same time.

David Brown agrees with the case consolidation. Mr. Brown suggests that the Initial 26.1 Disclosure Statements be filed by April of 2020. Discovery would then begin shortly thereafter.

The Court questions how trial would proceed in consolidated cases that have only one legal issue in common. Mr. Brown feels that the two cases can be tried at the same time.

Mr. McGinnis suggests that the discovery and motion practice are consolidated then sever the two cases for trial. Mr. McGinnis does not feel that there will be a lot of factual disputes in this matter other than is the 1919 Statute the exclusive mechanism to acquire appropriable water rights after 1919?

Mr. McGinnis questions if there is something specific in the subflow law that empowers the Court under an equitable approach to excuse people from complying with the 1919 Statute?

Ms. Brennan agrees with Mr. McGinnis as far as discovery and motion practice and sever the cases for trial. The Court and Ms. Brennan discuss whether the State has wells on state trust land in the subflow zone. The Court indicated an interest in including the State in the consolidated case if the State has a well pumping in the subflow zone in the San Pedro watershed.

Ms. Anger, Mr. Hood, and Mr. Cahoy also address the Court and offer their suggestions as to how the trial would proceed if the cases remained consolidated to the point of trial.

Mr. Sparks states that 60 days for filing a Disclosure Statement is not enough time given his schedule with other cases and expert reports may also be necessary. He suggests that the Court propose one or more questions of law specifically for comment by the participants and the structure of those questions.

Ms. Interpreter and Mr. Crestin agree with the schedule proposed by Mr. McGinnis.

Mr. Murphy raised the concern that if there is an issue of broad legal importance that it be clearly articulated. He is interested to see the legal theories that will be included in the Disclosure Statements.

Mr. Hood objects to delaying the filing of Disclosure Statements until June 2020.

The Notice of Broad Legal Importance is discussed. Mr. McGinnis doesn't believe that all of the specific issues can be narrowed until summary judgment motions. He states that the Notice should be more broadly phrased at the start until the issues are narrowed down.

Mr. Burnside states that the Initial 26.1 Disclosure Statements should be limited to the specific legal issue, i.e., the 1919 Code. The case should be bifurcated between the 1919 code compliance issue first and then move on to the other issues.

3:42 p.m. Matter concludes.

LATER:

**IT IS FURTHER ORDERED** that:

Initial 26.1 Disclosure Statements Disclosure Statements shall be due on **May 1, 2020**. As required by Ariz. R. Civ. P. 26.1(a)(2), the parties must state the legal theory on which the parties' claim or defense is based. Each party shall include in this portion of the Disclosure Statement, a statement of the issue which the party believes should be designated as an Issue of Broad Legal Importance under §12.00 Rules for Proceedings Before the Special Master.

All discovery shall be completed by **October 30, 2020**.

A status conference shall be held on **November 5, 2020 at 1:30 p.m.** in the Superior Court of Arizona, Central Court Building, Courtroom 301, 201 West Jefferson Street, Phoenix, AZ 85003-2202.

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

Motions shall be due by **January 11, 2021**. Ariz. R. Civ. P. 7(a) shall apply to all pleadings except that the time periods set forth in Pretrial Order No. 1 shall apply to pleadings filed in response to a Notice of an Issue of Broad Legal Importance.

Tentative trial date is **April 26, 2021**.

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