

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/13/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

S. Ortega
Deputy

In re: City of Tombstone
Contested Case No. W1-11-0473

FILED: 11/25/2019

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

2:45 p.m. This is the time set for a Status Conference.

The following attorneys and parties appear in-person: William H. Anger on behalf of Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale; Alexandra Arboleda on behalf of City of Tombstone; Rhett Billingsley on behalf of ASARCO; Charles L. Cahoy on behalf of City of Phoenix; and Mark McGinnis and Michael Foy on behalf of Salt River Project (“SRP”).

The following attorneys and parties appear telephonically: David Gehlert on behalf of U.S. Department of Justice; Julian Nava on behalf of Tonto Apache Tribe; Kimberly Parks for Arizona Department of Water Resources (ADWR); Laurel Herrmann on behalf of San Carlos Apache Tribe; William P. Sullivan on behalf of Pueblo Del Sol Water Company; and Jay Tomkus on behalf of the Pascua Yaqui Tribe and the Yavapai-Apache Nation.

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

Ms. Arboleda states that abstracts have been prepared and shared with the objectors by email. The City’s preference is to continue with settlement negotiations. The claims initially filed did not include all of the springs. In 2012 the City of Tombstone filed Statements of Claim applications for 20 additional springs. Amendments were filed in 1991 for the original springs (39-1647, 39-0728, 39-0729, 39-0730, 39-0731, and 39-0732) and additional filings were made in 2013 for springs 39-17683 through 39-17707. No filings have been made since 2013.

Ms. Arboleda believes 90 days is sufficient time to confer with the objectors regarding the proposed abstracts. The proposed abstracts have not been submitted to ADWR.

Mr. McGinnis supports the request for an additional 90-days to allow the parties to discuss issues related to the proposed abstracts. He further states that ADWR probably does not need to prepare an amended WFR if the proposed abstracts have a municipal beneficial use which is consistent with the use in the WFR. The priority dates are similar to the WFR. The quantities are different but quantities for municipal use can expand over time. May need an amended WFR if Tombstone is requesting uses separate from municipal uses, then may need to consider an amended WFR.

Mr. Cahoy has not had a chance to review the draft abstracts. He does not object to the 90-day request because amount of time requested justified by the complexities of the claims.

Ms. Parks states that it is the ADWR's position that as long as the claims are investigated it does not matter whether it is done as part of the San Pedro II HSR or as an amended WFR. There are a few issues with this claim because the quantities are different and the City of Tombstone originally claimed five springs and now claiming an additional 20 springs. She states that ADWR should investigate the claims to the new springs. It appears that the City of Tombstone is not the only entity or claimant to the original five springs.

Ms. Arboleda indicates that the City of Tombstone is claiming additional water sources, the 20 springs, that were not part of ADWR's investigation. The same spring system is being relied upon by the City since the system was built. Ms. Arboleda also responds to Mr. McGinnis's objections to the abstracts.

Ms. Herrmann agrees that 90 days is sufficient because of the complexity of the issues as she has not had a chance to review the abstracts. No position at this time about additional reports needed from ADWR.

Mr. Tomkus is that if an additional report is required by the *Asarco* ruling, then that would be acceptable. He has not had a chance to review the abstracts.

Mr. Nava has no position with respect to whether ADWR should prepare an amended WFR.

Mr. Sullivan has no position and states that he also has not had a chance to compare the draft abstracts to the WFR to determine whether additional notice is warranted.

Mr. Gehlert has no objection to the 90-day period requested by claimant.

Mr. Sullivan suggests 60 days for all parties to confer to determine whether likely to reach a settlement and whether an amendment is necessary. No objection from Mr. McGinnis and Mr. Cahoy.

For the reasons set forth on the record,

IT IS ORDERED that the parties shall file a status report within 60 days that addresses:
1) the likelihood of a stipulation to or resolution of objections to the City of Tombstone claims;
and 2) the parties' recommendation regarding an amended WFR based on the expected
differences between the proposed abstracts and the WFR.

3:15 p.m. Matter concludes.

A copy of this order is mailed to all persons listed on the Court-approved mailing list for
Contested Case No. W1-11-0473.