

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

06/17/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN HARRIS

L. Brown

Deputy

In re The General Adjudication of all Rights To
Use Water in The Little Colorado River System
and Source
Civil No. CV6417-033-9005R
Case Name In re Reporting of Diversion
Information and Other Objections

FILED: 09/15/2021

MINUTE ENTRY

Courtroom: CCB 301

4:00 p.m. This is the time set for a Status Conference before Special Master Susan Ward Harris.

All attorneys and parties appear telephonically and via Court Connect TEAMS.

Appearances are as follows:

- Janet Miller on behalf of the Arizona Department of Water Resources
- Kate Hoover and Judith Dworkin on behalf of the Navajo Nation
- Mark McGinnis and Alex Buchwalter on behalf of Salt River Project
- Charles Cahoy observing on behalf of the City of Phoenix
- Jeremiah Weiner on behalf of the Tonto Apache Tribe
- Robin Interpreter on behalf of the Yavapai Apache Nation, San Juan Southern Paiute Tribe and the Pascua Yaqui Tribe
- Alexandra Arboleda on behalf of the City of Flagstaff
- David Brown on behalf of the LCR Coalition
- Kevin Crestin on behalf of Arizona State Land Department
- Payslie Bowman observing on behalf of Hopi Tribe

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

Mr. McGinnis states that the issue of *de minimis* claims has been pending since around 1994 and that there are several different contested cases that were started on different issues and were consolidated into this -9005 case. He does not believe that Special Master Thorson's report about *de minimis* uses was ever approved by the Court.

The Court addresses counsel and lists the objections that were filed in 1995 to Special Master Thorson's 1994 Report.

Mr. McGinnis states that because of the consolidation of the cases the 1994 report deals with other things other than *de minimis* issues. Section 2 deals with the *de minimis* portion. Section 3 also deals with the *de minimis* and section 4 deals with the ownership of water rights that deal with state and federal land. Section 5 deals with an issue that was consolidated in regarding what to do with applications that are pending at the time of the HSR and new certificates and those types of things.

Section 4 deals with the ownership of water rights on public lands was largely superseded by the 1995 statute. In the *San Carlos* decision, the Supreme Court upheld the portion of that statute related to state lands and that is the statute that has been used in title 37 since then. The portion that related to federal lands was stricken down by *San Carlos*. Much of what Special Master Thornson dealt with in section 4 is gone primarily because of the 1995 statute. That is not something that needs to be moved forward with and his client would be happy to vacate section 4 because of the impact of the 1995 statute. Section 5 that dealt with the pending applications and new certificates was believed in 1994 that it would be a big issue but the department has moved forward with the administrative procedures and no one is clamoring to resolve that issue. Page 38 of the report starting on page 39 can be vacated and act like it never happened because it is basically moot at this point.

Sections 2 and 3 there was a trial and a lot of effort was given. There shouldn't be a new trial, and if parties want to file new objections that would make sense. You don't want to go forward with the *de minimis* abstract for uses in Silver Creek without an approved report.

Discussion about reissuing Report based on the record established by the parties.

Mr. Cahoy states that the City of Phoenix is not a party to this matter and that he is present for observation only. He does not disagree with Mr. McGinnis. He would like to remain on the mailing list.

Mr. Brown states that his position is a little different than Mr. McGinnis' position. He does not have a problem with re-writing the first three sections and does not care

about section 5, but does not agree with vacating section 4 because there are still issues regarding ownership of the water rights on federal lands. Instead of vacating section 4 it should be tabled. Section 4 will need to be re-done due to subsequent legislation.

Mr. Crestin stated he agrees with what Mr. Brown stated in terms of section 4 and agrees that there does not need to be a new trial and would support a new decision to which new objections may be filed.

Ms. Hoover states that she agrees with Mr. McGinnis' proposal as modified by Mr. Brown. It makes sense to revise the decision, allow for the filing of new objections, and send it to Judge Brain for approval. She also agrees the section 4 should not be vacated but tabled.

Ms. Bowman states that she is observing and that the Hope Tribe does not take a position.

Ms. Interpreter stated she agrees with Mr. McGinnis' position and Mr. Brown's position to stay the section 4 issues regarding the water rights on federal lands and but does agree that the *de minimis* issues and should be issued in another report and allow objections at a later time.

The Court addresses counsel regarding the history regarding Silver Creek and that there are six irrigation districts in Silver Creek according to the report prepared by Arizona Department of Water Resources.

The Court would like to begin the process to initiate cases for those irrigation companies, as it appears that there has been work done on the cases but the cases were not completed. Court invites the parties to meet and develop a plan to begin adjudicating the claims made by irrigation companies and districts.

Mr. Brown addresses the Court and asks what the Court will do with the 50 or 60 abstracts that are in the appendix to the 1994 decision prepared by Special Master Thorson. He thinks that the names are not current and need to be updated. He proposes that the abstracts can be approved and the case can move forward.

The Court stated it will follow the modifications proposed by Mr. McGinnis and Mr. Brown and issue a new order and the parties can file objections and then file a new order and take all the abstracts and the names will be corrected.

Mr. Brown addressed the Court. He stated a lot of things have happened since the 1994 stay. In light of the fact that there is litigation between the Navajo and the Hopi, his client will go broke if they have to go back to what they were doing in the Silver Creek litigation. He continues to support a continued stay while dealing with tribal rights. The Show Low Irrigation Company, the Pinetop Irrigation Company, and the Woodland

Irrigation Company consolidated and merged into one company. Now is not the right time to start the cases involving irrigation claims. He suggested no action be taken for six months and then schedule a new status conference to discuss the cases.

Mr. McGinnis addressed the Court. He stated he feels that the efforts are better spent during the next six month with issuing a new report and filing objections on the *de minimis*.

Mrs. Hoover addressed the Court. She stated she there is a lot going on in the Hope and Navajo litigation right now and would like to see other issues backburnered right now.

Mr. Crestin stated he will agree with Mr. Brown's position.

Mrs. Interpreter addressed the Court. She stated they agree with Mr. McGinnis' position.

The Court will take the next six to nine months to sort through the docket in the Silver Creek case and see how the cases progressed. She will not ask any of the parties to file any position at this time about the irrigation cases and will instead focus on submitting a report regarding her findings on *de minimis* claims and allow an objection period.

4:28 p.m. Matter concludes.

NOTE: All court proceedings are recorded digitally and not by a court reporter. The parties or counsel may request a CD of the proceedings. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

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