

SUPERIOR COURT OF ARIZONA  
APACHE COUNTY

10/26/2016

CLERK OF THE COURT  
FORM V000

SPECIAL WATER MASTER SUSAN WARD  
HARRIS

L. Stogsdill

Deputy

FILED: 11/14/2016

In re: the General Adjudication  
of All Rights to Use Water in the  
Little Colorado River System and Source

CV 6417-203

In re: Objections to Hopi HSR Report

**MINUTE ENTRY**

1:30 p.m. This is the time set for hearing before Special Master Susan Ward Harris to address objections to the Hopi HSR report submitted by: Richard L. Rush and Mary W. Shoemaker, Kenneth W. and Carol R. Taylor, Chelcey R. Fowler and Lynda Fowler, Linda Slade Fowler, Fowler Family Living Trust, Thora B. Perkins, Charles Pugh, William F. Bollin, David and Diane O'Grady, Lois E. Hunt, trustee of the M.R. and L.E. Hunt Living Trust, Philip A. and Rebecca M. Rohkohl, and Dennis and Sande Wagner.

The following attorneys and parties appear telephonically: J. Albert Brown on behalf of the Arizona Cattle Growers' Association, Aztec Land and Cattle Company Ltd. and St. David Irrigation District; Vanessa Boyd Willard on behalf of United States Department of Justice; Nicole D. Klobas and Janet L. Miller on behalf of Arizona Department of Water Resources; Stanley M. Pollack on behalf of the Navajo Nation Department of Justice; Joseph P. Mentor on behalf of the Hopi Tribe; Scott B. McElroy on behalf of the Navajo Nation. The following attorneys are present in the courtroom: Mark A. McGinnis, Patrick B. Sigl and John B. Weldon, Jr. on behalf of Salt River Project; Jenny Winkler on behalf of APS; David O'Grady who appears on his own behalf and on behalf of his wife, Diane O'Grady; and William F. Bollin who also appears on his own behalf.

Court reporter Linda Lopez is present and a recording of the proceeds is also made digitally.

A statement is presented by William Bollin regarding his objection to the Hopi HSR report.

The court advises Mr. Bollin that he properly filed a statement of claimant entitling him to file an objection and inquires as to Mr. Bollin's specific objection to the Hopi HSR report.

The court advises Mr. Bollin of the court's 2009 ruling regarding water rights regarding the Little Colorado River System.

For the reasons stated on the record,

**IT IS ORDERED** denying Mr. Bollin's objection to the Hopi HSR report.

The court further advises Mr. Bollin that the denial of his objection does not affect his standing as a claimant.

Counsel for the Hopi Tribe advises the court of its intention to file an appeal of the court's 2009 ruling with the Supreme Court.

A statement is presented by David O'Grady regarding his objection to the Hopi HSR report.

The court advises Mr. O'Grady that he properly filed a statement of claimant entitling him to file an objection.

For the reasons stated on the record,

**IT IS FURTHER ORDERED** denying Mr. O'Grady's objection.

The court further advises Mr. O'Grady that the denial does not affect his standing as a claimant.

Mr. O'Grady inquires if he will be notified if/when the Hopi Tribe files an appeal.

Counsel for SRP advises the court that notice would not be provided to the individual claimants.

The court states it will attempt to determine if there is a system in place that notifies the individual claimants if/when an appeal of the court's 2009 ruling is filed.

1:52 p.m. Matter concludes.

LATER: On December 18, 2015, the Arizona Department of Water Resources issued a Final Hydrographic Survey Report for the Hopi Reservation ("Report") that included a table entitled "Proposed water right attributes for past and present water uses on the Hopi Indian Reservation". The water right attributes for water rights to be held by the Hopi Tribe and the United States on behalf of the Hopi Tribe on the Hopi Reservation are

the subject of this contested case. Any claimant had the right to file written objections to the Report within 180 days of the date on which the Report was filed. A.R.S. §45-256(B). Each objection considered in this hearing was timely filed within the 180 day period.

#### Determination of Claimants

Only a party, as defined in Pre-Trial Order No. 1, or a claimant may file an objection to the Report. A.R.S. §45-256(B); Pre-Trial Order No. 1, filed April 24, 1987; Rules for Proceeding Before the Special Master, §1.15. To qualify as either a party or a claimant, a person must have filed or had filed on his or her behalf a statement of claimant form or be a successor in interest to a claimant. Pre-Trial Order No. 1, filed April 24, 1987; Rules for Proceeding Before the Special Master, §1.04.<sup>1</sup>

William Bollin, David and Diane O'Grady, Charles Pugh, and Philip A. and Rebecca M. Rohkohl filed timely objections and properly identified their respective statements of claimant. Dennis and Sande Wagner filed a timely objection but did not identify their statement of claimant. A review of the public records shows that Dennis and Sandra Wagner filed statement of claimant 39-95293.

Timely filed objections that identified relevant statements of claimant were filed by or on behalf of Chelcey R. Fowler and Lynda Slade Fowler (referred to as Linda Slade in each objection). The objections filed by or on behalf of Lynda J. Fowler and the Fowler Family Living Trust do reference statements of claimant, but the statements of claimant identified name Chelcey R. Fowler and Lynda Slade Fowler as the claimants. The public records do not include an assignment to or amendment of the statements of claimant that name Lynda J. Fowler or the Fowler Family Living Trust as claimants.

Lois E. Hunt, as trustee of the M.R. and L.E. Hunt Living Trust, filed two timely objections listing two statements of claimant that name Lois Hunt as the claimant. The public records maintained by the Arizona Department of Water Resources do not show that an assignment has been filed assigning the statements of claimant to Lois E. Hunt, as trustee. Ms. Hunt did not appear at the hearing. For purposes of considering the objection filed by Lois Hunt, the objection will be treated as having been filed by Ms. Hunt in her individual capacity.

Thora Perkins timely filed an objection and referenced statement of claimant 39-93864 that names Thora Perkins as trustee of the Ben L and Thora B. Perkins Trust. Thora Perkins did not appear at the hearing. For purposes of considering the objection filed by Thora Perkins, she is considered as having filed the objection in her capacity as a trustee.

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<sup>1</sup> The recognition of a person as a claimant in this proceeding does not constitute a determination that the person's statement of claimant satisfies the requirements of A.R.S. §45-254 or a finding on the merits of that person's claims to water rights listed in the statement of claimant. It is simply a determination that the person has filed a statement of claimant form.

The objection timely filed by Richard L. Rush and Mary W. Shoemaker does not reference a statement of claimant. The public records maintained by the Arizona Department of Water Resources do not contain a statement of claimant filed by Richard L. Rush and Mary W. Shoemaker. The objection timely filed by Kenneth W. and Carol R. Taylor does identify a statement of claimant, but that statement of claimant does not name them as the claimants and the public record does not show that statement of claimant 39-6417 has been assigned to them. Neither objection addresses the Report.

**IT IS FURTHER ORDERED** dismissing with prejudice the objections filed by or on behalf of Lynda J. Fowler, the Fowler Family Living Trust, Richard L. Rush and Mary W. Shoemaker, Kenneth W. and Carol R. Taylor.

### Objections

A valid objection must “specifically address the director’s recommendations regarding the particular water right claims or use investigated.” A.R.S. §45-256(B) The Special Master is obligated to dismiss with prejudice those objections that do not comply with these requirements. *Id.* None of the objections which were the subject of this hearing referred to any of the director’s recommendations in the Report regarding the particular water right claims or use investigated.

The objections filed by or on behalf of William Bollin, Chelcey R. Fowler, Linda Slade Fowler, Thora B. Perkins, and Charles Pugh simply identified their claims for water rights. The objection filed by David and Diane O’Grady referenced the Report, but generally objects to the Hopi Tribe’s claims for water “both inside and outside of their reservation lands” rather than to any specific recommendation of Arizona Department of Water Resources.

At the hearing, Mr. Bollin objected to any infringement of his use of water on his land. The objections filed by Lois E. Hunt, David and Diane O’Grady, Philip A. and Rebecca M. Rohkohl, and Dennis and Sande Wagner also opposed any “infringement or restriction of our right to access water” from the Little Colorado river system. Hunt Objection, Attachment A.; O’Grady Objection, p. 1; Rohkohl objection, p 2; Wagner Objection, p. 3. These objections focus solely on the Objectors’ potential water rights. The Objectors will have their claims for water rights adjudicated in a separate proceeding at a later time.<sup>2</sup>

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<sup>2</sup> The Court’s 1994 order may be helpful in understanding the sequence in which claims are considered. After reviewing the ongoing court proceedings in the Little Colorado River Adjudication and the expense incurred by and the burden imposed on the claimants, the Court entered an order stating: “This Court believes that examination of claims of reserved rights is of foremost importance to all claimants. Therefore, the Court believes the process will best be served by turning attention to the claims of the Indian lands now.” Order filed January 27, 1994.

Lois Hunt, David and Diane O’Grady and Philip A. and Rebecca M. Rohkohl requested affirmation of the Court’s minute entry dated November 4, 2004. In relevant part the minute entry states: “Jan Ronald addresses the Court on the direction ADWR should take regarding the Hopi Tribe [hydrographical survey report] HSR. . . .The Court directs that ADWR shall proceed with the main reservation lands.” To put the November 4, 2004 minute entry into context, the Court had earlier decided:

The preparation of a comprehensive [hydrographical survey report] HSR for all Hopi lands and for which the Tribe or the United States on its behalf claim a federal or state law water right will most efficiently accomplish the objections of this adjudication. For this reason, in preparing the Hopi HSR, ADWR is directed to investigate all statements of claimant for all reservation and non-reservation lands for which the Hopi Tribe or the United States on behalf of the Tribe claim water rights under federal or state law.

Minute Entry filed July 16, 2002.

On November 4, 2004, the Court effectively modified its 2002 order to direct Arizona Department of Water Resources to proceed with a hydrographic survey report that analyzed only claims for water use on the main reservation land. The November 4, 2004 minute entry does not consider the merits of the claims asserted by the Hopi Tribe or the United States on behalf of the Hopi Tribe.<sup>3</sup>

For the reasons set forth above,

**IT IS FURTHER ORDERED** that the objections filed by William Bollin, Chelcey R. Fowler Linda Slade Fowler, Lois E. Hunt, Thora Perkins as trustee of the Ben L and Thora B. Perkins Trust, Charles Pugh, David and Diane O’Grady, Philip A. and Rebecca M. Rohkohl, and Dennis and Sande Wagner are dismissed with prejudice.

Court Approved Mailing List

**IT IS FURTHER ORDERED** that Lynda J. Fowler, the Fowler Family Living Trust, Richard L. Rush and Mary W. Shoemaker, and Kenneth W. and Carol R. Taylor shall be removed from the court approved mailing list.

A copy of this order is mailed to all persons listed on the court approved mailing list dated November 8, 2016 for the Little Colorado River Adjudication Civil No. 6417-203 and will be posted on the website for the General Stream Adjudication (<https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/Index.asp>).

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<sup>3</sup> As referenced on pages 1-4 and 1-5 of the Report, the Court did rule on March 2, 2009, with respect to surface streams that “the Hopi is precluded from asserting water right claims in this adjudication to the extent such claims seek the right to water source located within the Little Colorado River Basin that neither abut nor traverse Hopi Lands”.