

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

September 2, 2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A. Parmar
Deputy

In Re The General Adjudication of
All Rights to Use Water in the Gila
River System and Source
W-1, W-2, W-3, W-4 (Consolidated)

FILED: September 13, 2021

In re: Town of Huachuca City and Whiting Ranches
Contested Case No. W1-11-0245 (consolidated)

MINUTE ENTRY

Courtroom CCB - 301

3:00 p.m. This is the time set for a telephonic Status Conference before Special Water Master Susan Ward Harris to address continued consolidation of cases and to set Scheduling Conferences.

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

The following attorneys appear via Court Connect:

- Charles Cahoy on behalf of the City of Phoenix
- Clyde Halstead on behalf of the City of Prescott
- David Brown on behalf of Michael J. and Susan S. Cavender, Gila Valley Irrigation District, Franklin Irrigation District and City of Cottonwood
- R. Lee Leininger and David W. Gelhert on behalf of the United States Department of Justice

- Kevin Crestin and Carrie Brennan on behalf of the Arizona State Land Department (“ASLD”)
- Mark McGinnis and Mike Foy on behalf of the Salt River Project (“SRP”)
- Jenny Winkler on behalf of the City of Chandler
- Kimberly Park on behalf of the Arizona Department of Water Resources (“ADWR”)
- Rhett Billingsley on behalf of American Smelting and Refining Company (“ASARCO”)
- John Burnside on behalf of BHP Copper and Arizona Public Service (“APS”)
- Thomas Murphy on behalf of the Gila River Indian Community
- Matthew O. and Anna M. Magoffin on behalf of the Trustees of the Magoffin Family Trust
- Michael J. Pearce on behalf of Mercer Claimants
- J Weiner on behalf of the Tonto Apache Tribe
- Jay Tomkus of behalf of the Yavapai Apache Nation (and observing on behalf of Pascua Yaquai Tribe)
- Sean Hood on behalf of Freeport Minerals Corporation
- Josh Greer and Steve Wene on behalf of Town of Huachuca City
- Bill Taebel on behalf of the City of Mesa
- Joe Sparks on behalf of the San Carlos Apache Tribe

The Court addresses the parties regarding an ex-parte email received by Anna M. Magoffin. The Court informs the parties that the email was deleted without being read and asks Ms. Magoffin to address her concerns today on the record.

Ms. Magoffin states she wanted to request a status conference to be updated on the status of her claims. Ms. Magoffin agrees to compile a spreadsheet/checklist for each of her claims to compare with the Court and the Court will set a status conference to address the list and ensure the claims are on track.

The Court addresses the parties regarding the consolidation of the Town of Huachuca City case and Whiting Ranches case. The Court does not believe it can adjudicate both cases together due to the different fact situations and its inclination is to deconsolidate them.

Mr. Greer believes the cases should remain consolidated at this time given that the parties are planning on appealing the Court’s Decision on Issues of Broad Legal Importance filed August 2, 2021. Mr. Greer understands that there is no final order to appeal and would like to address it at today’s conference.

Mr. Hood defers to the claimants in regards to the deconsolidation and next steps of the claims. In regards to the Court’s August 2, 2021 Decision, Mr. Hood proposes that the Court reduce the Decision to a Rule 53(e) Report so judicial review may be taken and requests 60 days to object to the report. Mr. Hood does not have an opinion on whether the Court should stay the cases affected by the decision.

Mr. Brown agrees with Mr. Greer and Mr. Hood regarding the consolidation of the cases and the Rule 53(e) Report. As to the Cavendars' claims, he does not believe it makes sense to proceed on the remaining claims for domestic wells during the pendency of the judicial review. He would not request a blanket stay on his other cases. Rather, the Court should take the issue of a stay on a case by case basis.

Mr. Leininger does not have position on the deconsolidation but does agree with Mr. Hood's proposal for the Rule 53(e) Report.

Mr. McGinnis agrees with going forward with a Rule 53(e) Report, but believes it would be helpful to nail down that the claimants' only basis is a post-1919 right for the irrigation claims.

Ms. Winkler agrees with Mr. McGinnis' and Mr. Hood's proposal to move forward under Rule 53(e) and has no position on the consolidation issue.

Mr. Sparks generally agrees with Mr. McGinnis and believes the Court. He believes that where a claimant has claims based on sources within and without the subflow zone, all claims should be adjudicated in one proceeding rather than in separate proceedings. He believes the court should stay the claims from the Town of Huachuca City pending the completion of the cone of depression test. Mr. Greer agrees with Mr. Sparks.

Ms. Brennan agrees with proceeding under Rule 53(e). She does not object to the cases remaining consolidated. In regards to the stay issue for all cases, she agrees with Mr. Brown that the decision should be made on a case by case basis.

Mr. Sparks addresses concerns about procedural status of all the cases in instances where an appeal is lodged and the trial court loses jurisdiction pending the resolution. He does not have a specific suggestion on how to proceed until he sees what remains before the trial court after the appeal.

Mr. Burnside agrees with Mr. Hood. He does not have anything to add with respect to the consolidation.

Mr. Cahoy has no objection to the Rule 53(e) Report subject to Mr. McGinnis' suggestion regarding absence of pre-1919 claims. He takes no position on the consolidation and is not prepared to take a position on the blanket stay.

Mr. Halstead generally agrees with proceeding with the report. He does not take a position on the consolidation or blanket stay.

Mr. Brown does not believe there is a pre-1919 irrigation right for the sprinkler system. He is not asserting any pre-1919 claims. Mr. Greer states that the Town of Huachuca City does not have evidence of and is not asserting any pre-1919 claims.

Mr. Pierce requests a continued stay for the adjudication of the watershed file report claim and agrees with Mr. Hood's proposal. Mr. Pierce states that the Mercer claimants do not assert a pre-1919 water right.

Mr. Weiner agrees with proceeding with the issuance of a final report.

Mr. Tomkus has nothing to add.

Mr. Taebel generally agrees with the comments of Mr. McGinnis and Mr. Hood and has no position with the consolidation issue. He does agree it makes sense to stay the claims in this case pending the appeal.

Mr. Sparks addresses the Court regarding the stay issue.

No objection is stated to the Court reducing its decision to a Rule 53(e) Report.

3:44 p.m. Matter concludes.

LATER: The cases will remain consolidated at this time. Findings of Fact and Conclusions of Law will be added to the decision dated August 2, 2021 and it will be issued as a final Report under Ariz. R. Civ. P. 53(e).

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