

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE  
THE HONORABLE MICHAEL C. NELSON, PRESIDING JUDGE**

**THE HONORABLE EDDWARD  
P. BALLINGER, JR., Visiting Judge**

**SUE HALL, Clerk**

COURT REPORTER: Susan Humphrey

By: Barbara J. Silversmith, Deputy

<b>IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE</b>	Case No. <b>CV-6417</b>  DATE:         October 08, 2002  TIME:         9:54 A. M.  <b>MINUTE ENTRY: Status Conference</b>
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<b>DESCRIPTIVE SUMMARY</b>	Status Conference held in the Apache County Superior Courtroom, St. Johns, Arizona.
<b>NUMBER OF PAGES</b>	8
<b>DATE OF FILING</b>	December 16, 2002

**MINUTE ENTRY**

This is the date and time set for a Status Conference in Civil No. 6417.

The Court introduces the court personnel and welcomes those in attendance for the Status Conference.

**APPEARANCES**

Mr. David Brown, representing various clients; Mr. Rob Emmett and Mr. Bob Delzer, representing City of Show Low; Mr. Stephen G. Bartell, representing the U.S. National Park Service, U.S. Forest Service and Bureau of Land Management; Ms. Jane Marx, representing the Pueblo of Zuni; Mr. Harry Sachse, Mr. A. Scott Canty, and Mr. Colin Hampson, representing the Hopi Tribe; Mr. Stanley Pollack, representing the Navajo Nation; Ms. Cynthia Chandley and Mr. William Richards, representing Phelps Dodge; Mr. Graham Clark, representing the Office of the Attorney General for the Arizona State Land Department; Ms. Jan Ronald and Mr.

Gregg Houtz, representing Arizona Department of Water Resources; Mr. William Staudenmaier, representing Arizona Public Service, Phelps Dodge and Aztec Land & Cattle Co.; Mr. John B. Weldon, Jr., Mr. David C. Roberts and Mr. Frederic Beeson, representing Salt River Project; Ms. Vanessa Boyd Willard, representing the U.S. Department of Justice (Indian Resources Section); Mr. Lauren J. Caster and Mr. Donald Blankenau, representing Abitibi Consolidated, the Arizona Water Company, Santa Fe Pacific Railroad Company and Burlington Northern Railroad Company; Ms. Lee Storey, representing the City of Flagstaff; Mr. Mitchel D. Platt, representing various claimants; Ms. Bernadette Tsosie, representing the Navajo Nation Department of Water Resources; Mr. Peter Fahmy, Mr. William W. Quinn and Mr. John Doney, representing the Department of the Interior (Office of the Solicitor); Mr. John Cawley, Department of the Interior/Bureau of Indian Affairs; Ms. Cynthia Haglin, representing City of Chandler; and Mr. John Hestard, representing Gila River Indian Community.

There are individuals present who may not have signed in.

Also in attendance: Special Master George A. Schade, Jr.; Kathy Dolge, Assistant to the Special Master; and Judge Michael C. Nelson, Presiding Judge of Apache County Superior Court and Settlement Judge in the Little Colorado River General Stream Adjudication.

### **STATUS OF SETTLEMENT DISCUSSIONS**

The Court welcomes everyone and goes over the agenda.

Upon inquiry by the Court regarding the status of the Zuni settlement, Ms. Jane Marx on behalf of the Zuni Tribe states the settlement is on the table and gives a brief update. She further advises that a bill has been introduced in the United States Senate.

The Court inquires concerning the status and steps for the approval process and how the legislation will be incorporated as part of the adjudication. Ms. Marx further states there are a number of steps to accomplish simultaneously with bringing it back to this Court for approval. Upon inquiry by the Court regarding a time frame for the submission of the settlement, several parties give input.

Mr. David Brown, on behalf of various claimants, states he understands there are several conditions that include legislative action at the state level and acquisition of water rights that are conditional before coming to the Court for approval of a settlement, which may take 2 years to complete due to the conditions precedent. The Court also inquires of Mr. Brown if the state legislature will require that the State expend money. Mr. Brown affirms that there will be state money expended.

Mr. John Weldon, on behalf of Salt River Project, states in addition to Mr. Brown's comments, there are federal appropriations required; and the Department of Interior will require modification of the legislation so appropriations occur over a three-year period. He further states his guess is 2004 or 2005 before the agreement is submitted to the Court for approval.

Mr. Gregg Houtz, on behalf of Arizona Department of Water Resources, addresses two items: A one million dollar appropriation he believes the parties will seek and, a change in the state law of severances and transfer of water rights to allow water uses on Zuni land. Mr. Houtz states that they intend to draft state legislation for the legislative session in January. He does not believe this portion will require any allocation of funds.

The Court inquires of the status of negotiations between others and states its understanding that the position of the Navajo Nation is that there is no prospect of settlement.

Mr. Stanley Pollack, on behalf of the Navajo Nation, concurs and states there are no ongoing settlement negotiations. He advises they are working with Peabody and its utility customers regarding the use of water from the N aquifer.

Mr. Pollack also advises the Court there is anticipation that negotiations may begin after the Kyl Study is completed. The Court states he will take it the way it is represented and addresses the Show Low Lake contested cases.

#### **SHOW LOW LAKE CONTESTED CASE**

The Court informs the parties of its views regarding the following matters:

- 1) Discovery before referral to the Special Master for trial preparation.

- 2) The status of the Watershed File Report ("WFR") related to Show Low Lake and a time line.
- 3) The Court's intention to refer the Show Low Lake case for trial preparation to the Special Master.

The Court expresses the importance of WFR revisions and getting the case ready for trial. The Court states that disclosures will comply with the requirements of the Arizona Rules of Civil Procedure so everyone has relevant information that relates to a claim and that all parties involved in the Show Low Lake case need to comply with Rule 26.1 of the Arizona Rules of Civil Procedure. The Court states its position regarding the importance of relevancy. The Court indicates that there will be a referral of Show Low Lake case to the Special Master with the idea of getting it to a point where it is ready for an evidentiary hearing.

Ms. Cynthia Chandley, on behalf of Phelps Dodge, poses questions regarding discovery and issues for litigation. She states there are numerous pending pretrial motions and further states there will be more motions in limine as new witnesses will be used.

The Court states its position and informs the parties about how he handled matters in large civil cases that minimized costs. He also advises the parties not to wait until the Arizona Department of Water Resources' report is received.

Ms. Chandley inquires how to handle pending pretrial motions as things have changed over the eight years and questions their applicability.

The Court defers the inquiry to the Special Master and suggests that the parties set a conference with him. He also suggests updating versions of the documents filed, including setting a procedure for resolution of discovery disputes.

#### **ADWR's STAFFING AND RESOURCES**

Upon inquiry by the Court, Ms. Jan Ronald, on behalf of Arizona Department of Water Resources, anticipates further changes within the department after the upcoming election. She expresses concern regarding the matters the department has been tasked and feels they need to have a serious conversation about how much the department can do at one time. She adds that working on an HSR is a resource intensive process.

The Court mentions that the Gila River Indian Reservation HSR is a major project for the department and inquires of a time frame to complete the update of the Show Low Lake WFR. Ms. Ronald reports two months of office time and one week of field work will be needed to update the Show Low Lake WFR.

The Court discusses prioritizing the department's adjudications work with direction from the Court.

**NAVAJO NATION'S MOTION FOR CLARIFICATION OF JULY 16, 2002 ORDER**

Upon inquiry by the Court regarding further clarification of its July 16, 2002, Mr. Pollack addresses the desired scope and frequency of disclosures by objectors claiming downstream water rights. He also inquires if parties involved in matters relating to upstream claims will be required to show evidence that supports their claims to downstream water rights.

Mr. Pollack asks for clarification concerning disclosure to 2400 water users identified in the Silver Creek HSR and where the boundaries are to support the validity of the claim. He further addresses the validity of Phelps Dodge's water right to Show Low Lake in relation to the Navajo Nation's downstream claims.

The Court reaffirms its position regarding disclosures.

Mr. William Staudenmaier, on behalf of Arizona Public Service and Aztec Land & Cattle Co., elaborates on Mr. Pollack's comments and states he has read and re-read the July 16<sup>th</sup> order concerning the claims of each of the tribes in the basin and their obligation to disclose both helpful and harmful matters relating to their reserved water rights. He also inquires of the scope of application of the Court's order and addresses other tribal claims.

The Court explains its concerns and states that the Court may have to clarify the order.

Mr. Harry Sachse, on behalf of the Hopi Tribe, points out page 14 of the order and the requirement to have preliminary issues pertaining to Hopi, Navajo or any other Tribe to be submitted by November 22, 2002, and the Court clarifies that the page 14 requirement is different from the 26.1 obligation.

Mr. Brown inquires of the Order's application to the Zuni Pueblo and states that due to the settlement he prefers not to include the Zuni Pueblo in the disclosures due on November 22, 2002. The Court states that until the Zuni claims are determined, the Court does not anticipate further proceedings on those claims unless progress is made toward a satisfactory settlement.

The Court informs Ms. Ronald that it will get together with the Special Master and issue an order concerning priorities, including the Show Low Lake WFR revisions.

Ms. Ronald informs there is a contested case before the Special Master in the Gila River Adjudication in which the department has been asked to prepare a supplemental contested case HSR by March 3, 2003, and inquires if that is top priority.

Upon inquiry by the Court, Mr. Schade prefers that the department update the WFR's in PWR 107 contested case and the Show Low Lake WFR.

Ms. Ronald makes comments regarding photos to determine the location of the PWR 107 springs. She explains what the department's intent was, but the United States has a contractor doing the field investigations to locate the springs. She states they want the contractor to finish the process and then the department would do some spot-checking to insure their methodology. This process would take about two months. She states the Show Low Lake case is similar, but the Fort Huachuca contested case is more complicated as it involves federal reserved water rights. She addresses issues that affect the time required to do a supplemental contested case HSR. As to the Hopi Tribe HSR, she hopes the information in the Kyl Study will be useful to the department and addresses the various projects the department has to do and how the department would align the tasks to work concurrently on issues whenever possible.

Mr. Pollack states he is nervous about department waiting for the Kyl Study and mentions Judge Dawson's protective order regarding the Kyl Study. He informs the Court the order prohibits parties from utilizing the study unless it is to support a procedure for settlement. He feels it would violate the protection order and would not insure confidentiality of settlement discussions. He further states Ms. Ronald's statements are in opposition to the study's intended use to facilitate settlement discussions and not be subsequently introduced into evidence in this proceeding. At the Court's request, Mr. Pollack recites Judge Dawson's order.

Ms. Ronald clarifies her comments and states the department has no intention of trying to violate the protective order and states the department does not want to interfere with negotiations or compromise the study process.

Mr. Pollack expresses concern regarding the order, addresses the protections of Rule 408 of the Rules of Evidence and which documents are in the public domain. He wants an opportunity to meet with the department before a draft is released.

Mr. Schade reports on the status of the Fort Huachuca and the PWR 107 contested cases. There is no brickwall deadline in Fort Huachuca and DWR will submit a status report next March to explain where they are in that process. He states his objective is to move on the Show Low Lake contested case before the end of the year, if the Court refers the matter to the Special Master.

Mr. Brown addresses priorities and states there very few BLM claims based on PWR107, and he does not feel they are as high a priority as far as getting the entire adjudication done. He suggests concentrating on the Hopi Tribe HSR and hopefully the adjudication will move forward.

The Court comments on the status of the Gila River Indian Reservation HSR.

**MOTION OF THE UNITED STATES FOR EXTENSION OF TIME  
TO FILE AMENDED STATEMENTS OF CLAIMANT**

Ms. Vanessa Boyd Willard, representing the United States Department of Justice, addresses the December 20, 2002 deadline for the United States and the Hopi Tribe to file amended statements of claimant. She requests an extension of time for the reasons that expert work was done in the early 1990s and needs to be revised, and additional funding needs to be obtained due to their focusing current funding for settlement rather than litigation. She states that essentially the funding for this fiscal year is done. The Bureau of Indian Affairs has put together a package requesting funding for litigation and submitted it to Washington for consideration and appropriation. This funding will not be available until February or March, 2003. Ms. Willard offers a proposal regarding expert work that supports past and present water uses to move the cases forward. The United States is working on including future water uses, but that work will require more than one year. She asks for an extension of time until the end of next summer.

The Court gives its position regarding the fairness of giving an extension.

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Mr. Sachse supports the extension for filing the amended statements of claimant and suggests the end of next summer.

The Court states it seems reasonable to grant the oral motion for an extension of time for filing amended claims until September 02, 2003. The motion is granted.

The Hopi Tribe and the United States shall file new or amended statements of claimant for all reservation and non-reservation lands for which the Tribe or the United States on behalf of the Tribe claim water rights under federal or state law on or before Tuesday, September 02, 2003.

Mr. Stephen G. Bartell, on behalf of U.S. Forest Service, National Park Service and Bureau of Land Management, gives an update of the settlement efforts involving the claims of the Bureau of Land Management, Forest Service and Park Service. The involved parties are coming out with another revised draft of the general settlement agreement next week with Judge Nelson's assistance in settlement efforts. He states they will continue to try to reach an agreement that is satisfactory to everybody.

IT IS HEREBY ORDERED the next Status Conference shall be held on **Tuesday, May 13, 2003** at the hour of **9:30 a.m.** in the Apache County Superior Court.

12:05 p.m. - Hearing adjourned.

The original is filed with the  
Apache County Superior Court.

A copy of this Minute Entry is  
mailed to parties on the Court-  
approved mailing list for  
CV-6417 dated July 16, 2002.

Recorded in Minute Book  
CV 2002-10 By: BJSilversmith