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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
—

CLERK OF THE COURT
FORM R000A

May 14, 1999

HON. SUSAN R. BOLTON

P. Woods
Deputy

— W-1, W-2, W-3, W-4 (Consolidated)
Contested Case Nos. W1-203 & W1-204; W1-11-19 (Consolidated)

In re The General Adjudication of all Rights to Use Water in the
Gila River System and Source

2:05 p.m. This is the time set for a Status Hearing.
Present are: John Weldon, Rodney Lewis, Cynthia Haglin, Doug
Nelson, Frederic Beeson, Anthony Fines, David Brown, Robert
Hoffman, Lee Storey, Irvall Mortensen, Brad Keogh, Alfred Cox,
Steven Hernandez, Joe Clifford, Marilyn Cage, Carlos Ronstadt,
Tim Delaney, Mike Brophy, John Schaper, Bill Staudenmaier, Jan
Ronald, Lauren Caster, Gregg Houtz, Jerry Haggard, William
Tifft, Joe Sparks, Kevin Tehan, William Anger, James Callahan,
Alan Matheson, William Sullivan, Gary Randall, Lee Leininger,
Sally Worthington, Patrick Barry, Riney Salmon, Special Master
John Thorson, Kathy Dolge and Oscar Garcia.

Court Reporter Kim Myrick is present.

**As to Joint Motion for a Stay in the Proceedings in
W1-203 (In re the Water Rights of the Gila River Indian
Community)**

John Weldon, representing the Salt River Project
claimants, stated his objection to a 60-day stay. He stated
that a 30-day stay would be acceptable. He suggested that a
status conference be set in June to discuss the progress of the
negotiations.

Rodney Lewis, representing the Gila River Indian
Community, described the intensive negotiations which have

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Contested Case Nos. W1-203 & W1-204; W1-11-19 (Consolidated) recently been held regarding the settlement. He stated that Senator Jon Kyl and Secretary of the Interior Bruce Babbitt have been actively participating in the aggressive schedule of meetings.

Mr. Lewis stated that the deadline for submitting the proposed legislation to Senator Kyl is 6-30-99. The drafted legislation will be introduced to Congress in July and hearings will begin in September on the Gila River Indian Community Settlement Bill. He requested an additional 60-day stay period for the responses to the Motion for Summary Judgment, from 6-1-99 to 8-1-99.

Mr. Lewis also advised the Court that an agreement has recently been reached with the Roosevelt Water Conservation District (RWCD).

Mr. Riney Salmon, representing the San Carlos Irrigation and Drainage District, stated his opposition to any extension of time. He stated that there is no guarantee that there will be a settlement with all of the parties.

Mr. Joseph Sparks, representing the San Carlos, Tonto, Yavapai and Apache Tribes, stated no objection to the requested extension. He stated that all parties should be relieved of their obligations during the settlement negotiations.

Anthony Fines and David Brown, representing the Gila Valley Irrigation District (GVID) and the Franklin Irrigation District (FID), requested that the stay be granted.

**As to Scheduling Dates Re Motion for Summary Judgment
Re Preclusive Effect of Globe Equity:**

IT IS ORDERED extending the time for responses in opposition to the Motions to Summary Judgment for 60 days, until 8-2-99 (rather than 6-1-99)

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IT IS FURTHER ORDERED extending the time for any replies thereto for 60 days thereafter, until 9-3-99 (rather than 7-1-99).

As to the Joint Motion Re Schedule for Consideration of Threshold Issues:

IT IS ORDERED extending the time for filing the Motion for Summary Judgment detailed in the Joint Motion for 60 days, until 8-2-99 (rather than 6-1-99).

IT IS FURTHER ORDERED extending the time for any responses thereto until 9-30-99 (rather than 8-30-99).

IT IS FURTHER ORDERED extending the time for any replies thereto until 10-29-99.

Patrick Barry, representing the United States, requested that a deadline be imposed for any party who intends to file a motion for summary judgment on other decrees and agreements not identified in the joint motion.

IT IS FURTHER ORDERED that any party intending to file a motion for summary judgment on other decrees and agreements not identified in the joint motion shall file such a notice of intent by 6-4-99 and in said notice identify the decrees and/or agreements that will be the subject of any motion for summary judgment.

As to Motion to Vacate Order for Special Proceedings in W1-204 (In re Proposed San Carlos Apache Tribe Water Rights Settlement):

The Court noted that the City of Chandler has approved the San Carlos Apache Tribe Water Rights Settlement Agreement and has filed a Motion to Withdraw from the Motion to Vacate

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Order for Special Proceedings.

Robert Hoffman, representing the Central Arizona Water Conservation District (CAWCD) and the City of Globe, stated that the federal statute defines that this Court has no jurisdiction to proceed with the settlement. He stated that the intent of Congress was that the neighboring communities be a part of the settlement. He stated that Congress must either amend the statute to eliminate certain parties or they must deal with all parties to reach the final settlement agreement.

Mr. Hoffman urged the Court to take the motion under advisement for 60 days and stay the progress of these special proceedings.

Mr. Brad Keogh, representing the City of Safford, stated support of the Motion to Vacate Order for Special Proceedings. He stated that Congress intended the City of Safford to be a necessary party to the Agreement. Mr. Keogh cited verbatim the various statutes which the Act provides.

Mr. Sparks stated that nothing in the proposed settlement agreement will affect the Cities of Globe or Safford. He stated that the boundaries of the settlement agreement are exclusively in the Salt and Black River watershed. He stated that Congress has authority over Indian affairs and Indian property rights. He asserted that the federal act was a settlement authorization, not a mandate.

Mr. Sparks stated that Congress has delegated the authority to the Secretary of the Interior to settle this matter. He stated that the notification procedure has begun and the public hearings should proceed.

Mr. Barry stated that the Supreme Court's Order for Special Proceedings relates to this Court's approval of the application, not the statute or the agreement. He stated that

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the Application satisfies the specification of Part A and B. He stated that the objections are limited to Part A and the orderly process set by the Supreme Court should be used to determine these issues.

Mr. Weldon stated that the proposed San Carlos Apache Tribe Water Rights Settlement resolves many of the claims which have been pending for over 10 years. He stated that the Court has the authority to approve settlements which have not been signed by all parties. He noted that previous settlements were not signed by all parties when submitted to the Court.

Mr. Weldon also stated that non-Indian parties want a waiver of claims to be approved by the court. He stated that such agreements can be signed well after the special settlement procedures commence and all objections asserted will be heard. He stated that the impact would be too great if the settlement is not executed by 12-31-99.

Mr. Weldon advised the Court that the City of Scottsdale has approved the San Carlos Apache Tribe Water Rights Settlement Agreement.

Tim Delaney, Chief Deputy Attorney General, representing Governor Jane Hull, requested that any ruling on the Motion to Vacate be delayed for at least two weeks which may allow time for the parties to resolve their differences. He expressed concern that the Cities of Globe and Safford have been excluded from the agreement. He stated that the Governor wants the best possible settlement agreement to go forward. He stated that the Governor would be contacting the Chairman of the Tribe and the respective Mayors to attempt to resolve these issues.

IT IS ORDERED taking the Motion to Vacate Order for Special Proceedings in W1-204 under advisement.

LET THE RECORD REFLECT that no ruling will be issued

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before the expiration of two weeks from this date.

IT IS FURTHER ORDERED denying the requested stay.

IT IS FURTHER ORDERED that this matter will proceed in accordance with the proposed schedule with no interruption in the procedure while this motion is under advisement.

Jan Ronald, representing the Arizona Department of Water Resources (ADWR), advised the Court that the San Carlos technical report will be filed on 5-17-99.

Mr. Sparks stated that of the over 27,000 mailings to the claimants, approximately 8,000 mailings were returned because of bad addresses. Most of the returned mailings were because forwarding addresses had expired. He stated that they have been working with ADWR to resolve the address issue.

The Court expressed its concern regarding the notice of 2-19-99 regarding the publication of the Gila River Indian Community (GRIC) Preliminary Hydrographic Survey Report (HSR) filed by ADWR. The Court also expressed its concern that the Preliminary HSR can only be viewed at one location - the Department of Water Resources, and not at any other location. The Court noted that this may not be sufficient under the statute. The Court further advised that she had contacted ADWR and asked that counsel be prepared to address notification issues at this hearing.

Ms. Ronald discussed the procedures utilized in the mailing procedure for the San Pedro River Watershed HSR in 1991. She stated that the GRIC Preliminary HSR was sent to only those parties on the court-approved mailing list. She suggested that the notice to be used for the GRIC Final HSR should include all claimants in the watershed area with an objection packet and then all claimants in the general adjudication without an

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objection packet. Ms. Ronald agreed with the Court that the 2-
19-99 Notice may be insufficient under the statute.

IT IS ORDERED that ADWR not issue the GRIC Final HSR
until the notification issues are approved by the Court.

LET THE RECORD REFLECT that the Court directed that
the Special Master consult with the Steering Committee and ADWR
to coordinate a plan that addresses notice of the GRIC
preliminary HSR, future availability for review of the GRIC
preliminary HSR as required by the statute and a plan to assure
adequate notice of the final HSR and the objection period. The
parties will also address the issue of returned notices and
updating of the mailing list.

LET THE RECORD FURTHER REFLECT that the Court intends
to communicate with ADWR in the future on the mailing list and
notice issues for the GRIC Preliminary and Final HSR.

3:40 p.m. Court stands at recess.

3:55 p.m. Court reconvenes with respective counsel
and parties present.

Court Reporter Kim Myrick is present.

**As to Motion to Set Discovery and Briefing Schedule Re
the Effect of the Globe Equity 59 Decree on the San Carlos
Apache Tribe:**

The Court suggested that ruling on said briefing
schedule be deferred until after 12-31-99.

Mr. Fines objected to deferring the scheduling and
suggested that disclosure begin on 8-27-99 as outlined in his
reply.

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Mr. Sparks stated that this matter should proceed to discover which parties are diverting water from the Gila River system. He stated that the upper Gila River HSR should be completed simultaneously with the San Carlos HSR.

Mr. Barry concurred that a determination must be made as to what parties are diverting water from the tributaries on the Gila River.

The Court advised the parties that the matter will be discussed again at the next hearing. The parties may file briefs with the Court in support of their positions.

As to Status of Updating San Pedro HSR:

The Court advised the parties that the status report will be deferred to the next hearing.

As to Request for Technical Assistance from ADWR for the Santa Cruz Active Management Area:

Lee Storey, representing Rio Rico Properties, Rio Rico Utilities, City of Nogales, Amado Properties and Baca Float Water Company, requested that ADWR provide technical assistance in the Santa Cruz Active Management Area to prepare a simplified HSR. She stated that mapping and field work would be required.

The Court suggested that counsel meet with ADWR to determine their current capabilities and obligations. The scope of work and a time table will need to be discussed. Before the Court enters any order, ADWR must be informed about what is being asked of it and have the opportunity to advise the Court of its position on the request for technical assistance.

IT IS ORDERED deferring this matter to the next hearing to allow the counsel time to consult with ADWR.

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Carlos Ronstadt, representing Inscription Canyon Ranch, stated that they will arrange a meeting with ADWR to discuss this request.

As to Scheduling Hearing on Special Master's Report on Group I Cases involving Stockwatering, Stockponds, Domestic Uses; Case No. W1-11-19, in Re Sands Group of Cases and Other Related Cases:

Steven Hernandez, representing seven of the eight stock watering clients in W1-11-19 (Consol.) matter, suggested that ADWR analyze the calculations made by the Special Master on this decision. He stated that the objections may be withdrawn if this is done.

Alfred Cox, representing Silas Kisto, questioned the process by stating that ADWR should not be allowed to critique objections as ADWR was a witness in the contested case.

The Court advised the parties that the objections will be heard first and then the Court will determine if it needs to make a request for technical assistance.

David Brown, representing the Franklin Irrigation District (FID), suggested that this matter be deferred for three to four months to allow the settlement to proceed.

Joe Clifford, representing the State of Arizona Game and Fish Department, concurred with the recommendation of Mr. Brown.

As to the Next Hearing Date:

IT IS ORDERED setting a **STATUS HEARING ON 6-29-99 AT 9:00 A.M.**, to discuss the following:

- 1) Update on San Pedro HSR.

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2) ADWR Report on feasibility/time table regarding proposed technical assistance on the Santa Cruz Active Management Area.

3) Proper notice procedures for the GRIC Preliminary and Final HSR and plan to update and correct the mailing list.

4) Set Schedule for Hearing Objections to Special Master's Report on San Pedro.

5) Motion to Set Discovery and Briefing Schedule Re the Effect of the Globe Equity 59 Decree on the San Carlos Apache Tribe.

As to W1-102 Danny Lee Trimble & Mary K. Trimble v. Martin S. Chattman & Joann Chattman:

LET THE RECORD REFLECT that the Application for Attorneys' Fees and Costs and the filed Opposition thereto have been referred to the Special Master.

4:30 p.m. Court adjourns.

* * *

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated 5-14-99. This is also the Court-approved mailing list for W1-203 and W1-204.

LET THE RECORD REFLECT that the request from Lucille B. Baker to be added to the Court-approved mailing list for the Gila River Adjudication has been approved, as reflected on the 5-14-99 mailing list.

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Also, a copy of this minute entry is mailed to all parties on the Court-approved W1-11-19 (Consol.) mailing list dated 3-17-99.

Copies also mailed to:

Noel J. Hebets (Attorney for Claimants Trimble)
P. O. Box 4870
Cave Creek, AZ 85327-4870

Frederick E. Davidson (Attorney for Claimants
Chattman)
8711 E. Pinnacle Peak Road, #213
Scottsdale, AZ 85255-3555

* * *

LATER:

Pursuant to Paloma Investments Limited Partnership's Motion for Substitution of Parties,

IT IS ORDERED approving and settling formal written Order that Paloma Ranch Investments and Gillespie Dam Investments LLC are substitute as parties in place of Paloma Investment Limited Partnership.

IT IS FURTHER ORDERED relieving former counsel for Paloma Investment Limited Partnership, Lewis and Roca LLP, from any further responsibility in this case.

IT IS FURTHER ORDERED amending the Court's mailing list deleting Lewis and Roca LLP and adding Tom Galbraith, Meyer, Hendricks & Bivens, P.A., 3003 North Central, Suite 1200,

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Phoenix, AZ 85012.

Formal written Order in accordance with the above is
signed by the Court on 5-18-99.