

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/17/2007

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

M. Wetherell
Deputy

W-1, W-2, W-3, W-4(Consolidated)

Contested Case No. W1-207

FILED: 1/23/2007

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

In re Proposed Gila River Indian
Community Water Rights Settlement
Special Proceeding

In Re Oral Argument: Legal Issues
Raised by the Arizona Supreme
Court's Special Procedural Order

MINUTE ENTRY

Northeast Courtroom 112

9:31 a.m. This is the time set for oral argument on the legal issues raised by the Arizona Supreme Court's Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes (May 16, 1991). Present are: Joe P. Sparks on behalf of San Carlos Apache Tribe, Yavapai-Apache Nation and Tonto Apache Tribe (collectively "the Apache Tribes"); Cynthia M. Chandley on behalf of Phelps Dodge Corporation; John C. Lemaster and Bill Staudenmaier on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users (collectively "LGWU"); Jennifer K. Giff, Donald R. Pongrace, John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, and

Docket Code 000

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Rodney B. Lewis on behalf of the Gila River Indian Community; Scott B. McElroy and Stanley Pollack on behalf of the Navajo Nation; F. Patrick Barry on behalf of the United States; Janet L. Ronald and Gregg A. Houtz on behalf of the Arizona Department of Water Resources; Marilyn D. Cage on behalf of the City of Goodyear; M. James Callahan on behalf of the City of Phoenix; Steve Wene on behalf of the City of Safford; Stanley B. Lutz on behalf of BHP Copper Inc.; Patrick B. Sigl on behalf of the Arizona Attorney General's Office; Bill Anger on behalf of the Cities of Avondale, Glendale, Mesa, Chandler, and Scottsdale; John B. Weldon, Jr. and Lisa M. McKnight on behalf of Salt River Project; Cynthia J. Haglin on behalf of the City of Chandler; L. Anthony Fines on behalf of Gila Valley Irrigation District and Franklin Irrigation District; Michael J. Pearce on behalf of ASARCO LLC; Riney B. Salmon II on behalf of the San Carlos Irrigation District; Charlotte Benson on behalf of the City of Tempe; William P. Sullivan on behalf of the Town of Gilbert; Mark A. McGinnis on behalf of the Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District. Special Master George A. Schade, Jr. is present.

Court Reporter, Patty Connolly, is present.

Discussion is held regarding whether or not the form of judgment must be signed exactly as presented to the Court. Mr. Weldon states his position on behalf of the Salt River Project. Mr. McElroy states his position on behalf of the Navajo Nation.

Mr. Nelson presents argument to the Court on behalf of the LGWU objectors. LGWU orally joins in the memorandum that was filed by the Apache Tribes regarding issue number one and with regards to issue number two to a limited extent as stated on the record.

Mr. Sparks presents argument to the Court on behalf of the Apache Tribes. He states that the Court must consider all objections to the proposed settlement agreement.

Ms. Chandley on behalf of Phelps Dodge Corporation presents argument to the Court. She states that the exchange agreement between the Gila River Indian Community and Phelps Dodge has not been completed.

Mr. Barry on behalf of the United States presents argument to the Court. He discusses the different standards for approval in the Arizona Supreme Court's special procedural orders in the two adjudications.

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Mr. Pongrace on behalf of the Gila River Indian Community presents argument to the Court and agrees with Mr. Barry's position on both issues.

Mr. Weldon on behalf of the Salt River Project presents argument to the Court. He provides background concerning both special procedural orders.

Mr. Hestand on behalf of the Gila River Indian Community presents argument regarding the Court's jurisdiction over Central Arizona Project water and imported water.

Mr. McGinnis on behalf of the Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District presents argument to the Court addressing Mr. Nelson's position on issue number two.

Mr. Nelson presents argument that distinguishes prior cases between "contract rights" and "water rights."

Mr. Sparks presents further argument concerning the extent of information about impacts on claimants provided in the Arizona Department of Water Resources' technical assessment report. He discusses the Court's equity jurisdiction, and the need for the proposed settlement agreement to be "functionally true."

Mr. Barry presents further argument and provides the Court with a copy of Special Master John E. Thorson's October 6, 1999, recommended ruling.

Ms. Ronald on behalf of the Arizona Department of Water Resources responds to Mr. Sparks' comments concerning the department's technical assessment report and describes a recent supplement to the department's Web site.

The Court, Mr. Sparks, and Mr. Barry discuss the discovery schedule for the determination of the pending motions for summary disposition.

The Court wants counsel to meet and participate in good faith discussions regarding discovery. The Court will conduct discovery conferences at the completion of the oral argument on the summary judgment motions.

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IT IS ORDERED vacating the Court's January 10, 2007, order with respect to discovery requirements due on January 31, 2007.

IT IS FURTHER ORDERED that the Navajo Nation shall file its response to the motion for summary disposition of the Nation's objection by January 26, 2007.

12:06 p.m. Matter concludes.

LATER:

The Court has considered the parties' positions regarding the scope of the Court's inquiry in connection with considering whether to approve the proposed Gila River Indian Community Water Rights Settlement (the "Settlement Agreement"). To accommodate those who may wish to seek immediate relief from the Court's determination, this Order is fashioned as a ruling on the Apache Tribes' Motion for Order Determining the Application of the Arizona Supreme Court's Special Procedural Order and LGWU's Motion Responding to Threshold Issues Identified by the Court. After due consideration,

IT IS ORDERED granting both motions and directing that the Court will apply the Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes dated May 16, 1991, (the "Special Order" or "Order") as set forth below.

A. Extent of the Court's Inquiry in Considering the Settlement Agreement

The Court finds that the Special Order limits its inquiry in connection with considering approval of the Settlement Agreement to the matters explicitly set forth in the Order. The Court declines to infer that it is appropriate to consider issues not addressed in the Special Order, which is unambiguous and mandates approval should the settling parties satisfy the requirements enumerated in the Order.

B. Relevant Sources of Water

The Court finds that the law is clear and consistent in limiting this tribunal's authority to declarations regarding those water sources specifically within the Court's jurisdiction and that water diverted from the Colorado River as part of the delivery system put in place by the Central

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Arizona Project or other foreign sources are not among these sources. In evaluating whether the Settlement Agreement satisfies the requirement set forth in Paragraph D.6 (a) of the Special Order, which directs the Court to condition approval upon a finding that the Settlement Agreement does not provide the Gila River Indian Community water rights more extensive than the Community would have been able to prove at trial, the Court will only consider rights to water from sources emanating from the watersheds subject to this Court's jurisdiction.

The Court expresses no view as to the merits of the objections to approval of the Settlement Agreement that are based upon allegations unrelated to the specific requisites for approval set forth in the Special Order. To the extent they are valid, they need to be pursued in another judicial forum.

IT IS FURTHER ORDERED:

1. The determination as to whether to approve the Settlement Agreement shall be made based solely upon the Court's findings as to whether the settling parties have complied with the explicit terms of the Special Order; and
2. Resolution of the question as to whether the Gila River Indian Community will receive more extensive water rights as a result of the Settlement Agreement than it would be able to prove at trial will be limited to comparing relative entitlement to water sources subject to the jurisdiction of this Court.

/s/ Eddward P. Ballinger, Jr.
Hon. Eddward P. Ballinger Jr.
Superior Court Judge

A copy of this order is mailed to all parties on the Court-approved mailing list for Contested Case No. W1-207 dated October 12, 2006.