

and Mr. Ron McDaniels, representing the City of Winslow; Mr. Barry Sanders and Mr. Alan Matheson, representing Arizona Public Service and Aztec Land and Cattle Company; Mr. William Staudenmaier, representing Arizona Public Service; Mr. Marc Jerden, representing Tucson Electric Power Company; Mr. Carlos Ronstadt, representing Southern California Edison; Mr. Thomas Wilmoth, representing the Arizona Department of Water Resources; Mr. Bradley S. Bridgewater, representing the United States; Mr. Michael Connor, representing the U.S. Department of the Interior; Mr. Andrew F. Walch, representing the United States National Park Service, Forest Service and Bureau of Land Management; Ms. M. Sharon Blackwell, representing the United States Federal Negotiating Team; Ms. Jane Marx, Ms. Joan M. Cheama, Mr. Harry Chimon, representing the Pueblo of Zuni; Ms. Lee Storey, representing the City of Flagstaff; Ms. Rachel Sakiestean-Scott, Mr. Lyman W. Polacca, Mr. Scott Canty, Mr. Eugene Kaye and Mr. Reid Chambers, representing the Hopi Tribe; Mr. Stanley Pollack and Mr. Scott McElroy, representing the Navajo Nation; Mr. Johnnie D. Francis, representing the Navajo Nation Department of Water Resources; Mr. Peter Fahmy, representing the Office of the Solicitor, Department of the Interior; and Mr. Peter Foundling, National Forest Service. Malcolm Anderson and Mark Reynolds also announced their appearance for this hearing, but neither names nor representations were found on the sign-in sheet for this hearing.

Also in attendance: Special Master John E. Thorson; Ms. Kathy Dolge, assistant to the Special Master; Judge Michael C. Nelson, Presiding Judge of Apache County Superior Court.

OPENING REMARKS

The Court inquires if any person is attending for the first time, and there are at least three persons who raise their hands. The Court welcomes all those in attendance for this Status Conference, explaining that the Court expects to hear from those parties involved in this case as well as any other individuals who wish to be heard. The Court indicates that a new Judge has not been appointed by the Arizona Supreme Court. The hope had been that the selected Judge would have been in attendance for this hearing to allow for some continuity and familiarity with the case. As of this date, no information has been received regarding the selection of a replacement or appointment. Judge Minker relates the assumption that the new Judge will be appointed by the end of December 1998, when his term ends.

The Court references a recent communication received from David Hayes of the U. S. Department of the Interior.

REPORTS

The Court calls Mr. Chambers to summarize the progress that has been made. Mr. Reid Chambers, representing the Hopi Tribe, advises that the one deal-breaking issue concerns the amount of water from Lake Powell. Mr. Chambers further advises that as of last week, this issue remained unresolved. After reviewing the letter from David Hayes referenced above, Mr. Chambers states that he is again hopeful that a resolution may be reached, and urges the Court to continue negotiations. Mr. Chambers further states that he supports the Status Report dated November 13, 1998, but references one additional possible impasse that involves a disagreement between the Hopi Tribe, the Navajo Nation and the State regarding a shortfall in the amount of water in the proposed pipeline. Mr. Chambers advises that of the few remaining issues, none appear to be deal-breakers.

The Court inquires about a possible time frame for the proposal to be drafted and ready to present to Congress.

Mr. Chambers responds that he believes it could be done by January or early February of 1999. Mr. Chambers states that one additional piece of information is needed regarding grandfather issues from Peabody Coal Company, and that this information is expected by December 1, 1998. Other remaining issues are described as simply negotiation issues. Mr. Chambers defers to other parties, but believes these issues can be resolved in the next month or two. Mr. Chambers advises that the month of February appears to be the best time to get legislation introduced in Congress. Mr. Chambers expresses regret that the issues have not been resolved during Judge Minker's tenure, and thanks the Court for the work, skill, patience and forbearance granted.

The Court next calls Mr. Pollack. Mr. Stanley Pollack, representing the Navajo Nation, states that he had hoped to have the issues resolved by this date, and that the presentation given by Mr. Chambers is accurate. Mr. Pollack also states that he is encouraged by the recent letter from the Department of Interior. Mr. Pollack identifies one outstanding issue as being the marketability of water. A November 10, 1998, meeting occurred with the Department of Water Resources, but no final resolution resulted from that meeting. Mr. Pollack further advises that no resolution has been reached in the Three Canyons Project. Mr. Pollack references other remaining issues including those involving the Fish and Wildlife Department and other involved parties. Mr. Pollack does not believe it will be reasonable to expect to go to Congress with a proposal by January or February of 1999. He suggests that another year may be needed to resolve all the remaining issues. Mr. Pollack further states his belief that the best hope is for a drafted proposal by April 1, 1999, and ready to be introduced by the fall season of that year. Mr. Pollack reviews issues that need to be resolved including:

- ▶ Marketing issues and need for agreement in the Three Canyons Project.
- ▶ Cost of the settlement and need for a unified position.

Mr. Pollack states that he is looking for commitment from the other parties in these matters. Mr. Pollack also expresses gratitude to the Court for patience granted in these issues.

The Court next calls Mr. Haggard to speak on behalf of Phelps Dodge. Mr. Jerry L. Haggard advises that there is not much to add, but that he is encouraged by the United States' proposal to add volume to the pipeline. He urges the Department of Water Resources to support that proposal as well. Mr. Haggard further advises that the April 1, 1999, deadline appears to be realistic and, if that deadline is not met, the Court should set a trial schedule. Mr. Haggard also expresses gratitude and appreciation to the Court for the patience, understanding and guidance, and offers best wishes for Judge Minker's future endeavors. The Court comments on Mr. Haggard's longevity in the case, remembering that Mr. Haggard's signature is on the very first document filed in this case.

The Court then calls Mr. Bridgewater to comment. Mr. Bradley S. Bridgewater, representing the United States, attempts to put this case in perspective by reviewing a New Mexico water settlement which is now in the final stage of negotiation after having been in negotiations for thirteen years. Mr. Bridgewater points out that negotiations are often long and hard with both ups and downs in the process. Mr. Bridgewater states that he is encouraged by the letter from the Department of the Interior, but he is not certain that the April 1, 1999 deadline is a realistic date for the entire settlement package to be wrapped up. Mr. Bridgewater states that progress on the details is being made and that if the major pieces will fall into place,

he believes that they can move forward. Mr. Bridgewater adds his appreciation to the Court for the fair manner in which the proceedings have been conducted, and that Judge Minker will be missed.

Mr. Mike Conner, U. S. Department of the Interior, apologizes for the late delivery of the letter from Mr. Hayes. Mr. Conner explains that the issues raised by the letter have been discussed.

The Court calls Mr. Clifford to comment. Mr. Joe Clifford, representing the office of the Arizona Attorney General, advises that he has not worked recently on the water marketing and pipeline issues, but that progress has been made with regard to the Three Canyons Project. Mr. Clifford states that the benefits of the settlement negotiations appear to outweigh the serious problems encountered. Mr. Clifford thanks the Court for the patience granted time after time.

Ms. Jane Marx, representing the Pueblo of Zuni, is called to comment. Ms. Marx reports of great progress made under the direction of Judge Nelson, advises that a proposed draft settlement agreement is being circulated, and reviews plans to continue with confidence that the remaining issues can be resolved. Ms. Marx also extends best wishes to the Court in future endeavors.

The Court calls John Weldon to comment. Mr. John Weldon, representing Salt River Project, discusses the letter received from Mr. Hayes on the previous night. Mr. Weldon states his belief that the letter is positive and encouraging and further states his opinion that Salt River Project will support the allocations suggested in the letter. Mr. Weldon comments that the November 13, 1998 Status Report appeared to be negative, and that a return to litigation may have been probable as a result of that report. Mr. Weldon states the need for a firm litigation track to be set by the Court. Mr. Weldon reviews the costs of various water projects including the Central Arizona Project and the proposed pipeline. Mr. Weldon further reviews discussions, advising that a definition of the Three Canyons Project will be required before any proposal is drafted for presentation to Congress. Mr. Weldon states his concerns about the large costs involved, and does not believe this proposal can be drafted by April 1999. Mr. Weldon acknowledges that great strides have been made, but that early in 2000 may be the earliest date that a proposal can be finalized. Mr. Weldon further states that a trial schedule is necessary to keep these matters on track, and encourages the Court to set this schedule. Mr. Weldon expresses his regret that Judge Minker is leaving, advises that it will be difficult for a new Judge to step in, and states that Judge Minker will be missed.

The Court calls Mr. Wilmoth to comment on the activity of the Department of Water Resources in this matter. Mr. Tom Wilmoth, representing the Department of Water Resources, thanks the Court for his tenure in this case, and wishes him well in future endeavors as well. Mr. Wilmoth references the following issues:

- ▶ The new proposal made by the Navajo Tribe.
- ▶ The legality of the proposed terms of the Upper Colorado River Basin Contract.

The additional water requested from the proposed pipeline is not yet acceptable to DWR. Mr. Wilmoth advises that after reviewing the recent letter from Mr. Hayes, the position of the Department of Water Resources may change, but that future discussions are necessary. Mr. Wilmoth is not optimistic that other parties will support the request for additional water. Mr. Wilmoth states the need for statewide discussion regarding these issues.

The Court calls Mr. David Brown to comment. Mr. Brown states that at previous Status Conferences he has responded by stating he is appearing on behalf of various clients. Mr. Brown explains that his clients are numerous, change from month to month, and that the coalition is fragile. Clients represented by Mr. Brown include: Town of Eagar; City of Holbrook; Town of Pinetop-Lakeside; City of Show Low; Town of Springerville; Town of Snowflake; Town of Taylor; City of Winslow; Navapache Hospital District; Woodruff Domestic Water Improvement District; Forest Lake Domestic Water Improvement District; Silver Creek Irrigation District; Show Low Irrigation/Woodland/Pinetop-Woodland Irrigation Company; Lakeside Irrigation Company; Round Valley Water Users Association; Lyman Water Company; Joseph City Irrigation District; Woodruff Irrigation District; Bar T Bar Ranch, Inc; Chilson Family Trust; Flying M Ranch; F-Bar Cattle Company; Flying Box Ranch; Brusally Ranch; Brown Ranches; Whiting Ranch; Feezor Farms, twenty-plus ranches, farms and small industries, and Arizona Cattle Growers Association. Mr. Brown further explains that this list represents an area from Flagstaff to the Arizona-New Mexico border. Mr. Brown states the continuing difficulty in explaining a federal reserve right claim for new council members and various newly elected town and city officials. Mr. Brown comments that it is also difficult for the coalition to understand why the process is taking so long. Mr. Brown echos the sentiments of Mr. Bridgewater, acknowledging that the intricacy and complexity involved in these matters take a considerable amount of time. Mr. Brown states his regret that Judge Minker is leaving, and expresses his gratitude for all the Court has given. Mr. Brown concludes by stating his concerns about the Three Canyons Project that “doesn’t yet make sense on paper” and requests that deadlines be set by the Court on a reasonable schedule.

The Court observes that at this point everyone in the room seems to feel that the settlement process should go forward. The Court inquires if anyone present has a different opinion. There is no response.

The Court calls Mr. Caster to comment. Mr. Lauren J. Caster, representing Stone Container Corporation and other clients, comments that he has nothing to add, but encourages the Court to impose deadlines. Mr. Caster, on behalf of his clients, also expresses his thanks to the Court.

The Court calls Mr. Walch to report. Mr. Andrew F. Walch, U. S. National Park Service, Forest Service and Bureau of Land Management, reports on continued negotiations including an agreement in concept between the various agencies and parties. Mr. Walch states that there has been substantial progress, and advises that a meeting has been scheduled in Albuquerque to put together the final agreements. Mr. Walch adds his appreciation for the Court’s efforts in these matters.

Mr. Wilmoth responds to the remarks of Mr. Walch, stating that there are problems regarding the federal reserve water rights claims and the Glen Canyon Dam. Mr. Wilmoth advises that there is no assurance that other water users would be supportive regarding the proposed water flow.

Mr. Walch acknowledges a meeting and discussion with DWR occurring the week before, stating that it is clear some matters regarding federal reserve rights have not been taken into consideration by DWR. Mr. Walch expresses hope for a better understanding.

The Court calls Mr. Shumway to comment. Mr. Pete Shumway, representing the Little Colorado River Counties, states his desire to have this matter resolved, and recognizes the importance of the work done by Judge Minker, Judge Nelson and Special Master Thorson. Mr. Shumway also states his concerns

regarding the numerous issues to be addressed, the large amount of money involved, and further states his support of a schedule of strenuous restrictions and deadlines to be imposed by the Court.

The Court inquires if there is anyone else who wishes to comment. Mr. William Darling, on behalf of Atkinson Trading Company, addresses the Court regarding a petition filed in 1997 regarding impasse issues with the Navajo Nation that was put on hold. Mr. Darling requests that this petition be put back on track for resolution.

Mr. Pollack responds by stating that he believed the matter had been resolved, and further believes that a resolution of the matter is not a requirement of the settlement agreement. Mr. Pollack states that if Atkinson Trading Company believes it is essential, the matter can be litigated.

The Court inquires if there is anyone else who wishes to comment. Hearing no response, the Court calls for a twenty minute recess.

11:05 a.m. Status Conference stands in recess.

11:26 a.m. Hearing resumes.

The Court recognizes and commends the work that has been done by the lawyers and parties with the assistance of Judge Nelson. The Court references a remark made previously by Judge Nelson, pointing out that when viewing the work left undone and issues that remain unresolved, the view also needs to include the work that has been accomplished. The Court observes that a great deal has been accomplished and that Judge Nelson also agrees with this sentiment.

IT IS HEREBY ORDERED that Atkinson Trading Company's petition for declaratory judgment be referred to the Special Master for briefing and hearing. The Special Master shall indicate any requirements or deadlines to those parties involved in that petition. The Court recommends to the Special Master that, in the resolution of the petition, the Special Master take into account the time requirements or other deadlines facing these parties and time and resource requirements of the Navajo Nation necessary for their full participation in the settlement discussions. Where needed, the Special Master should adjust the schedule to allow for this accommodation.

IT IS FURTHER ORDERED that the Department of Water Resources and the National Park Service shall continue direct discussions regarding the unresolved issues described on this date by Mr. Wilmoth and Mr. Walch.

IT IS FURTHER ORDERED that the Department of Water Resources and the National Park Service shall file a joint report to the Court **on or before March 26, 1999**, regarding:

- ▶ The status of those discussions referenced above.
- ▶ Any resolution that has been reached.
- ▶ What remains to be resolved.
- ▶ The process of any such resolution.

The Court recognizes that late developments have altered the ability to confer on the issues ordered by the Court to be resolved by this date by the various attorneys and parties appearing in Court today, those issues are marketability of water and the amount of water allocated to the pipeline. The Court therefore grants additional time for the parties to reach resolution on those two issues.

IT IS FURTHER ORDERED that a written report be submitted to the Court by **February 15, 1999**, addressing those two specific issues. The Court comments that this time is necessary to allow for the consideration of the letter from David Hayes, referenced previously, by those parties involved.

IT IS FURTHER ORDERED setting an additional Status Conference on **Thursday, April 1, 1999, at 9:30 a.m.** in the Apache County Superior Court, St. Johns, Arizona. This conference shall be presided over by the Judge to be appointed by the Arizona Supreme Court, replacing the Honorable Allen G. Minker.

IT IS FURTHER ORDERED that the Settlement Committee file its report to the Court regarding the status of all discussions and negotiations by **Friday, March 26, 1999**.

The Court expresses appreciation for those comments made in gratitude regarding his efforts and work in this case. The Court shares selected observations he has made during his tenure, including the fact that this case is unlike any other assignment he has been given. The Court describes the case as being driven by two emotions: frustration and hope. The Court further observes that there has been no argument or issues to be decided in this case during the past four years, but that this negotiation process may be the better way of proceeding. The benefits of settlement may outweigh the litigation process. The Court describes what he considers to be two of the best decisions made during his tenure in this matter, those being:

- ▶ As a member of the selection committee, the selection of John E. Thorson as Special Master.
- ▶ The selection of Judge Michael C. Nelson as Settlement Judge.

The Court further describes an earlier time when the various diverse parties appeared as adversaries. Now they have come together in the mutual interest of working toward sharing basic amenities and securities of life.

The Court urges the parties to stay focused on their goal, and expresses the wish for tremendous success in the resolution of this case.

11:50 a.m. The Court turns the time to Judge Nelson for additional instruction.

Judge Nelson requests that this day be marked with a photograph to be taken on the front lawn of the Apache County Superior Courthouse. A luncheon to honor Judge Minker will follow the photograph session. The Court is recessed.

ALLEN G. MINKER
JUDGE OF THE SUPERIOR COURT

The original of the foregoing filed with the Superior Court Clerk of Apache County.

On this day of December, 1998, a copy of the foregoing is mailed to those parties who appear on the Court-approved mailing list for Civil No. 6417 dated April 3, 1998.

Carolyn Morrow, Deputy