

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 EDWARD L. DAWSON
Visiting Judge

SUE HALL, Clerk

COURT REPORTER: Susan Humphrey

By: Carolyn Morrow, Deputy

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE	Case No. CV-6417 DATE: August 30, 2001 TIME: 10:35 a.m. STATUS CONFERENCE
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DESCRIPTIVE SUMMARY	Status Conference held in the Apache County Superior Courtroom, St. Johns, Arizona.
NUMBER OF PAGES	9
DATE OF FILING	October 16, 2001

MINUTE ENTRY

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

The Court welcomes those in attendance for the Status Conference and calls for appearances.

APPEARANCES

Appearances include the following: Mr. David Brown, representing various clients; Mr. Johnnie D. Francis, representing the Navajo Nation Department of Water Resources; Mr. Stanley Pollack and Mr. Scott McElroy, representing the Navajo Nation; Mr. John B. Weldon, Jr., Mr. David C. Roberts, Mr. Frederic Beeson, and Ms. Brenda Burman, representing Salt River Project; Mr. Joe Feller, Professor of Law, Arizona State University; Mr. Robert Sejkora, representing Arizona State Parks; Mr. Robert Hoffman, Mr. Richard Bertholf and Mr. Mansour Nader, representing Southern California Edison; Mr. Lauren J. Caster, representing Abitibi Consolidated, the Arizona Water Company, Santa Fe Pacific Railroad Company and the Burlington Northern Railroad Company; Mr. Skip Hellerud, representing Abitibi Consolidated; Ms. Lee Storey, representing the City of Flagstaff; Mr. Mitchel D. Platt, representing various claimants; Ms. Cynthia Chandley and Ms. Dawn Meidinger,

representing Phelps Dodge Corporation; Mr. William Staudenmaier, representing Arizona Public Service, Phelps Dodge and Aztec Land and Cattle Company; Mr. Edward Sullivan, representing Peabody Western Coal Company; Mr. Harry R. Sachse, representing the Hopi Tribe; Ms. Jan Ronald, representing Arizona Department of Water Resources; Mr. Louis Quinn, representing the Bureau of Land Management; Mr. Graham Clark, representing the Office of the Arizona Attorney General; Mr. Jim Boles, Mayor of the City of Winslow; Mr. Bill Barris, representing the City of Winslow; Mr. Mike Foley, representing the Navajo Department of Water Resources; Mr. Stephen G. Bartell, representing the United States; Mr. Andrew F. Walch, representing the United States National Park Service, Forest Service and Bureau of Land Management; Mr. Peter Fahmy, representing the Department of the Interior; Mr. Bill Hansen, representing the National Park Service; Ms. Jane Marx and Ms. Susan Williams representing the Pueblo of Zuni; Mr. William Darling, representing Cameron Trading Post and Atkinson Trading Company; Mr. John Cawley, representing the Department of the Interior; and Mr. Charles Jakosa, representing the United States Department of Justice. There were several individuals who did not sign in and whose names were unintelligible to the clerk.

Mr. Del Molitor, representing the Bureau of Land Management in Safford, appeared in the courtroom after appearances were given.

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 Stream Adjudication.

The Court concludes the appearances with the request that everyone sign in so each name can be registered correctly and included in the record of this hearing.

SETTLEMENT NEGOTIATIONS

The Court calls for reports on settlement negotiations that have been taking place, beginning with the Northern Parties.

Mr. Harry Sachse, representing the Hopi Tribe, expresses his feelings that the present time appears to be the best in many years for settlement negotiations. Mr. Sachse asks that the Court continue to stay the trial during the ongoing negotiations. Mr. Sachse further requests that during the stay, the Court will continue to provide the help of Judge Nelson during negotiations.

Mr. Robert Hoffman, representing Southern California Edison, states that the company needs to make decisions regarding the future of the Mohave

Generating Plant by December 31, 2002, and the company needs to have water issues settled prior to that date.

Mr. Stanley Pollack, representing the Navajo Nation, comments that since Southern California Edison is not a party to this adjudication, the time deadline referenced above should not be included as part of the settlement issue. Mr. Pollack favors a comprehensive settlement broader than the issues associated with the Mohave Generating Plant. He supports continued negotiations while Senator Kyl's study proceeds, and asks for Judge Nelson's help in the settlement process.

Mr. John Weldon, representing Salt River Project, is supportive of continued negotiations and states his concerns regarding the California Edison deadline as well as his concerns regarding proposed studies. Mr. Weldon also states his appreciation of Judge Nelson's help in the settlement negotiations.

Mr. Charles Jakosa, U.S. Department of Justice, supports continuing settlement negotiations, but states that the United States contribution in this matter has not yet been addressed by the Bush administration.

Mr. Edward L. Sullivan, representing Peabody Western Coal Company, hopes for a resolution but advises that they are prepared to move forward quickly and encourages the Court to continue to work with the parties toward resolution, even though Senator Kyl's study is ongoing.

The Court acknowledges the general agreement that the settlement negotiations should go on during Senator Kyl's study and expresses the hope that the United States' commitment will continue and that agreements can be made.

NATIONAL PARK SERVICE AGREEMENTS

Mr. Andrew Walch states that he has a document concerning a stipulation between the United States and various parties that can be entered into the record at the present time. Mr. Walch has the authority to sign the documents, and invites the other parties to sign so the originals can be lodged with the Court. Mr. Walch signs the agreement with Arizona Public Service, but Mr. Staudenmaier advises that he cannot sign today without management approval. The original is given to Mr. Staudenmaier. Mr. Walch signs the agreement with Abitibi Consolidated, but Mr. Lauren Caster also advises that he needs management approval before signing. The original is given to Mr. Caster. Mr. Walch signs the agreement with Salt River Project, and Mr. John Weldon, stating that he has authority to sign for Salt River Project, adds his signature to the document. The signed document is lodged with the Court. Mr. Walch signs the agreement with Tucson Electric Company, but there is no one appearing in Court on behalf of Tucson Electric

Company. Mr. Walch advises that the agreement will be forwarded for signature. Mr. Walch signs the agreement with the City of Flagstaff. Ms. Lee Storey advises that she will present the agreement to the city council meeting scheduled for September 10, 2001. The original is given to Ms. Storey.

There is discussion regarding the agreements being binding only between the parties involved, with the understanding that these agreements would be submitted to the Court at a future time. Mr. Staudenmaier views this as being only step one of the process. He believes that a formal motion is necessary for the Court to accept these agreements, and a broader settlement agreement reached later would be considered in a special proceeding. The Court agrees that lodging a motion with the Court is the next step, and preliminary basis for settlement. Mr. Walch responds that a motion could be made after all the signatures have been given. Mr. Staudenmaier references a draft motion he has previously prepared, with this intention.

BUREAU OF LAND MANAGEMENT

The Court calls for comments from the Bureau of Land Management. Mr. Stephen Bartell advises that the United States will continue to work on agreements with both federal and non-federal parties. Mr. Bartell states that on August 28, 2001, a new draft was distributed to the parties, and he encourages future meetings with Judge Nelson while remaining optimistic. Upon the Court's inquiry, Mr. Bartell advises that he hopes to prepare the final draft after the future proposed meeting with Judge Nelson. Mr. Bartell also advises that in the event the Court should set a trial date, the United States could be ready in six months.

Mr. Lauren Caster, representing Abitibi Consolidated, states that the latest draft for signature represents a significant improvement, and urges the Court to grant the time for negotiations which would fit with Judge Nelson's schedule.

The Court inquires as to whether the setting of a trial date would be useful at this time, and there are no responses.

SILVER CREEK DE MINIMIS REPORT

The Court references former Special Master John Thorson's report on the procedures for adjudicating stockpounds, stockwatering uses, and wildlife uses in the Silver Creek watershed (de minimis water uses), issued in 1994. The Court states that Judge Ballinger, Presiding Judge of the Gila River Adjudication, will hear oral argument on September 27, 2001, on the comments filed regarding Mr. Thorson's report prepared for the San Pedro

River watershed. The Court asks for comments on the Silver Creek watershed report.

Mr. Lauren Caster states that he filed comments regarding de minimis water uses and that there are differences between the San Pedro and the Silver Creek reports, for example, the Silver Creek report did not address domestic uses. Mr. Caster suggests that the Court grant time for the parties to comment on the issues raised in the Silver Creek report and not rely on decisions issued in Gila River adjudication matters.

Mr. Dave Brown states that most of the Special Master's Silver Creek report focused on ownership issues, and urges the Court not to continue with the de minimis issues at this time, but to continue to work toward settlement.

Mr. Andrew Walch offers his concerns about the report of Special Master John Thorson, stating that his objections were filed with the Court. Mr. Walch joins with Mr. Brown in urging the Court to continue with settlement negotiations as long as there is progress. Mr. Walch states that the proceedings on the San Pedro report will provide good guidance and again asks the Court not to proceed with the Silver Creek Report at this time.

HYDROGRAPHIC SURVEY REPORTS

The Court addresses the reports to be prepared by the Department of Water Resources and asks for comments.

Mr. Harry R. Sachse briefly reviews a report filed on behalf of the Hopi Tribe, and states that the hydrology of the basin should be the first consideration instead of a Hopi hydrographic survey report ("HSR").

Mr. Scott McElroy, on behalf of the Navajo Nation, also recommends that the hydrology of the basin (including both ground water and surface water) should be the first report prepared by the Department of Water Resources while settlement negotiations are ongoing. Mr. McElroy wants the Department of Water Resources to do extensive hydrological work, including the preparation of computer modeling studies for surface water and groundwater.

Mr. Lauren Caster disagrees with Mr. McElroy, asking the Court to look at the statutory requirements and authority directing the Department of Water Resources to investigate water right claims. Mr. Caster states that any modeling studies done by the Department of Water Resources would result in the department assuming an advocate's role, a position it is not authorized to have in the adjudication.

Mr. Staudenmaier agrees with Mr. Caster referencing comments filed with the Court last September. He states that the department can address the

hydrology of the Little Colorado River watershed by updating its 1989 technical report, and states that there is no need for a separate HSR for hydrology.

Mr. John Weldon, on behalf of Salt River Project, agrees that the purpose of the Little Colorado River Adjudication is not to litigate the hydrology of the river system, but to analyze water rights claims. He agrees with the positions of Mr. Caster and Mr. Staudenmaier.

Ms. Jan Ronald, on behalf of the Department of Water Resources, advises that the department can update the 1989 technical report at the same time it prepares the Hopi HSR. Ms. Ronald states that the department has limited resources and is working on the Gila River Indian Community HSR so timing is uncertain for beginning a Little Colorado HSR. The department plans to prepare Indian HSRs in the same manner that it is preparing the Gila River Indian Community HSR. Ms. Ronald states her belief that work on the Hopi HSR could begin sometime after the end of this calendar year.

There is discussion, and Mr. McElroy and Mr. Sachse make additional comments. Mr. Sachse states that there is no real disagreement with the Hopi Tribe being the first Indian HSR, but a hydrology report should be prepared prior to an HSR for the Tribe's claims.

Mr. Andrew Walch asks for a point of clarification on the HSR regarding the Department of Water Resources accepting data from other sources. Mr. Walch wants to know if it is a closed process within the Department of Water Resources, or if it is open to receive data from other sources outside the department. Ms. Ronald advises that any data is welcome regarding the hydrology of the area. Ms. Ronald states that the data would be evaluated, and parties will be allowed to comment before a report is finalized.

Special Master Schade inquires if the department plans to update its 1989 technical report or add a hydrology section to the HSR. Ms. Ronald responds that a new report is not anticipated, but a section on hydrology as it relates to the claims being investigated would be included in the HSR.

The Court asks for additional comments and there being none, requests to hear from Special Master Schade.

REPORT FROM SPECIAL MASTER SCHADE

Special Master Schade briefly comments on his role as Special Master and his commitment to litigation. The Special Master reviews the activities of the office during the past six months, including the publication of the *Arizona General Stream Adjudication Bulletin* on the newly expanded Web site. The Web site will also feature a new page for a calendar and a section for current

events and will provide more information. The Special Master also advises that he has been working with the Department of Water Resources to update mailing lists and urges the updating of statements of claimant to show current information.

The Court expresses appreciation to Special Master Schade and proceeds to discussion of the NAVAJO NATION'S MOTION FOR PROTECTIVE ORDER dated June 19, 2001, and filed with the Court on June 20, 2001.

MOTION FOR PROTECTIVE ORDER

Mr. McElroy states that a proposed form of order, addressing the objections filed to the motion for a protective order, was lodged with the Court on August 21, 2001. Mr. Staudenmaier states that the Court should be cautious in granting a protective order as it applies to discoverable data. Mr. Sachse states he has not seen the most recently lodged order.

The Court advises that the parties will have the opportunity to review and respond to the NOTICE OF LODGING REVISED FORM OR PROPOSED PROTECTIVE ORDER AND REQUEST FOR ENTRY OF PROTECTIVE ORDER, which was dated August 21, 2001, and filed with the Court on August 22, 2001.

ZUNI NEGOTIATIONS

The Court hears comments from Ms. Jane Marx regarding the ongoing negotiations with the Zuni Tribe. Ms. Marx states that there are still a few significant issues that need to be resolved, but resolution is very close, and if a settlement is not possible, she will ask the Court to set a litigation schedule. A time frame is discussed, and Ms. Marx suggests a matter of weeks, but by the end of the year for certain.

Mr. Jakosa states that the new Administration may have other views regarding the Zuni negotiations and urges the Court to wait on setting a litigation schedule. He states that the prior Administration did not agree with all the provisions of the proposed settlement.

NEXT STATUS CONFERENCE

A date for the next hearing is discussed. The Court proposes a time in mid-February of next year. Mr. Brown states his preference for a date after April 1, 2002, due to his participation in another water case that will be tried in March 2002.

The Court takes the matter under advisement and will set the date at the end of this Minute Entry.

12:10 p.m. Hearing is adjourned.

ORDERS

After considering the pleadings and the comments of counsel, the Court issues the following orders:

1. IT IS ORDERED that if and after the involved parties sign the agreements relating to the National Park Service, the parties shall file a motion requesting the Court's approval of the agreements. The parties shall advise the Court if a special proceeding, conducted pursuant to the Administrative Order of the Arizona Supreme Court issued on September 27, 2000, is anticipated.

2. IT IS FURTHER ORDERED that if similar agreements relating to the Bureau of Land Management and the U.S. Forest Service are reached, the parties shall file a motion requesting the Court's approval of the agreements. The parties shall advise the Court if a special proceeding, conducted pursuant to the Administrative Order of the Arizona Supreme Court issued on September 27, 2000, is anticipated.

3. IT IS FURTHER ORDERED that the Court shall not take up at this time former Special Master Thorson's report on the procedures for adjudicating stockponds, stockwatering uses, and wildlife uses in the Silver Creek watershed, issued in 1994. The Court will address this report at a more appropriate time in the adjudication.

4. The Arizona Department of Water Resources ("ADWR") is directed to commence the preparation of an HSR for the Hopi Tribal lands by May 1, 2002.

5. IT IS FURTHER ORDERED that ADWR shall prepare the Hopi Tribe HSR in the same manner and with the same scope as the department has prepared the HSR for the Gila River Indian Community in the Gila River Adjudication.

6. IT IS FURTHER ORDERED that the HSR for the Hopi Tribe shall contain scientific and technical information relative to the hydrology associated with the water rights claims investigated and reported in the Hopi Tribe HSR. The Court does not see appreciable merit in either preparing a separate hydrology HSR or report for the Little Colorado River watershed or in preparing such a report in advance of an HSR specific to the Hopi Tribe. The resources of the parties, as they continue settlement negotiations on several fronts, and of ADWR will be more productively utilized in preparing an HSR for the Hopi Tribe.

7. IT IS FURTHER ORDERED that ADWR shall not be required to undertake or complete computer modeling studies of surface water or groundwater as part of the Hopi Tribe HSR. The preparation of computer modeling studies by ADWR creates an unreasonable risk of placing the department in an advocacy role when the litigation of this HSR begins, a risk that the first Tribal lands-specific HSR in this adjudication should not have to face. Further, it is not clear that the benefits of ADWR preparing computer modeling studies would outweigh the delays due to the complexity of modeling work.

8. IT IS FURTHER ORDERED that at this time, ADWR shall not be expected to update the Preliminary HSR for Indian Lands in the Little Colorado River System dated September 1994. The department's administrative and technical resources should be fully committed to completing the Hopi Tribe HSR. Pursuant to this Court's minute entry dated May 5, 2000, parties submitted comments to ADWR regarding the 1994 HSR. ADWR should use those comments to the extent they can assist ADWR in preparing the Hopi Tribe HSR.

9. IT IS FURTHER ORDERED that unless the Court is advised to the contrary, those parties who previously filed notices of intent to participate in litigation relating to the Indian Lands HSR, will be deemed to have filed an intent to participate in the litigation relating to the Hopi Tribe HSR. The Court makes this determination in the interest of case management efficiency.

On September 12, 2000, the Hopi Tribe filed for leave to submit its notice of intent to participate, beyond the Court-ordered deadline. The Court grants the request, and the Hopi Tribe's notice of intent to participate is accepted.

10. IT IS FURTHER ORDERED that a schedule for disclosure will be set at a later time.

11. IT IS FURTHER ORDERED that any party who wishes the Court to address issues that should be considered in conjunction with the preparation of the Hopi Tribe HSR, may file a motion, on or before December 31, 2001, identifying the specific issues. The Court may refer to the Special Master, for hearing and report, all or part of the issues, which would be heard in a contested case before the Master.

12. IT IS FURTHER ORDERED that the parties shall have until Thursday, November 1, 2001, to file comments on the proposed form of protective order lodged by the Navajo Nation on August 22, 2001. No responses or replies will be allowed.

13. IT IS FURTHER ORDERED approving the substitution of Stephen G. Bartell, Esq. for Andrew F. Walch, Esq., as counsel for the United States on behalf of the National Park Service, U.S. Forest Service, and Bureau of Land Management.

14. IT IS FURTHER ORDERED that the Court-approved mailing list shall be amended by removing Mr. Walch and adding Mr. Bartell, whose address is:

Stephen G. Bartell, Esq.
General Litigation Section
Environmental & Natural Resources Division
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20044-0663

15. IT IS FURTHER ORDERED that the next Status Conference shall be held on Thursday, April 18, 2002, at 10:00 a.m., in the Apache County Superior Court.

DATED this 12th day of October, 2001.

/s/ Edward L. Dawson

EDWARD L. DAWSON
Judge of the Superior Court

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

On this 16th day of October, 2001, a copy
of the foregoing is mailed to those parties
who appear on the Court-approved mailing
list for CV-6417 dated July 13, 2001.

/s/ Carolyn Morrow

Carolyn Morrow, Deputy