

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE**

THE HONORABLE MICHAEL C. NELSON, PRESIDING JUDGE

IN CHAMBERS

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IN OPEN COURT

(X)

THE HONORABLE EDWARD L. DAWSON
Visiting Judge

SUE HALL, Clerk

By: C. Morrow, Deputy

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
LITTLE COLORADO RIVER SYSTEM
AND SOURCE

DATE: April 27, 2000

TIME: 1:05 p.m.

STATUS CONFERENCE

CIVIL NO. 6417

DESCRIPTIVE SUMMARY:	Status Conference held in the Apache County Superior Courtroom, St. Johns, Arizona.
NUMBER OF PAGES:	4
DATE OF FILING:	May 5, 2000

MINUTE ENTRY

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

Courtroom Reporter: Susan Humphrey.

The Court welcomes those in attendance for the Status Conference.

APPEARANCES

The Court calls for appearances and they include the following: Mr. David A. Brown, representing various claimants; Mr. Scott McElroy and Mr. Stanley Pollack, representing the Navajo Nation; Mr. John B. Weldon Jr., Ms. Brenda Burman, and Mr. David C. Roberts, representing Salt River Project; Mr. Reid Chambers and Mr. Scott Canty, representing the Hopi Tribe; Mr. Charles Jakosa, U. S. Department of Justice; Mr. John Cawley, Department of the Interior/Bureau of Indian Affairs; Mr. Andrew F. Walch, representing the National Park Service, Forest Service and Bureau of Land Management; Mr. Verl Heap, representing St. Johns Irrigation Company; Mr. Eldon Pulsipher, representing Lyman Water Company; Mr. Pete Shumway, representing LCR counties; Mr. Johnnie Francis, representing the Navajo Nation; Mr. Dwight Reynolds, representing St. Johns Ditch Company; Mr. Edward L. Sullivan, representing Peabody Western Coal Company; Mr. Robert Hoffman, representing Southern California Edison; Mr. Eugene Kay and Ms. Esther Talayumptewa, representing the Hopi Tribe; Ms. Jane Marx and Ms. Susan Williams, representing the Pueblo of Zuni; Mr. Marc Jerden, representing Tucson Electric Power Company; Mr. David M. Call, representing the Stone Container Corporation, Abitibi Consolidated Sales

Corporation, the Arizona Water Company, Santa Fe Pacific Railroad Company and the Burlington Northern Santa Fe Railroad Company; Mr. Jim Odenkirk, representing Arizona Game and Fish; Ms. Mary Grier, representing the Arizona Attorney General's Office; Mr. R. W. Barris, representing the City of Winslow; Mr. Ed Peacock, hydrologist with the Arizona General's office; Mr. Adrian Hansen, representing the City of Flagstaff; Mr. William Darling, Attorney representing Cameron Trading Post and Atkinson Trading Company; Mr. Joe Papa and Mr. Brad Richards, representing the Town of Snowflake; Mr. William Staudenmaier, representing Arizona Public Service, Phelps Dodge and Aztec Land and Cattle Company; Mr. Richard Bertholf, representing Southern California Edison; Ms. Alexandra Arboleda, representing the Arizona Department of Water Resources; Mr. Tom Anderson, representing Lyman Water Company; and Mr. Gordon Farr, representing the Slade Family Trust.

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 and Settlement Judge in the Little Colorado Stream Adjudication.

REPORTS

The Court calls for special reports on the different pieces of the ongoing settlement negotiations.

Mr. Reid Chambers reports on Hopi-Navajo "North Side" Discussions, reviewing briefly events and various meetings since the last Status Conference. Mr. Chambers states that there is agreement in principle between the parties, although Edison is in final negotiation stages of selling the Mohave plant, and the parties are waiting for this matter to conclude. Mr. Chambers further reports on meetings with United States Senator Jon Kyl, Mr. Jakosa and other parties. Mr. Chambers remarks on the recent visit of President Clinton to the Navajo Nation, adding that in addition to the fifty percent of the homes on the reservation not having telephones, fifty percent of the homes on the reservation also do not have complete plumbing or kitchen facilities.

Following a brief discussion regarding the costs involved, Mr. Pollack, representing the Navajo Nation, reports on the Hopi-Navajo "South Side" discussions. Mr. Pollack states that he has had no meetings with Senator Kyl since the last Status Conference, but a meeting is scheduled in two weeks. Mr. Pollack further states that the Navajo Nation is willing to live by the commitments that have been made, and would like to hear from the other parties to determine if they are ready to move forward with negotiations. Mr. Pollack remarks that there has been no closure or final agreement since commitment has not been made toward moving together as a group.

The Court agrees that there is the need now for the parties to come together instead of meeting one on one.

Ms. Susan Williams, representing the Zuni Tribe, reports on Zuni Pueblo issues and references a recent meeting with Senator Kyl. Ms. Williams states that they are close to final settlement, and summarizes a proposed "Zuni only" settlement. Ms. Williams further comments regarding several remaining issues to be worked out, including concerns of the United States.

Mr. Andrew Walch, representing the National Park Service as well as other public lands owned by the United States, reports that Mr. Peter Fahmy has been circulating a draft proposal, but that one paragraph

in the draft was inadvertently omitted. Mr. Walch states that a final version of the draft will be completed soon.

Mr. Reid Chambers states for the record that the Hopi Tribe would oppose a "Zuni-only" settlement.

Mr. Stanley Pollack reports that he is in agreement with Mr. Chambers and the Hopi Tribe in this matter, and requests that the other parties support a comprehensive settlement.

Mr. John B. Weldon, Jr., representing Salt River Project, references current litigation and reports that Salt River Project will not be on board in this matter unless coal leases are validated.

Mr. Robert Hoffman, representing Southern California Edison, briefly reports on other ongoing settlements including the Central Arizona Project.

Mr. William Staudenmaier, representing Arizona Public Service, Phelps Dodge and Aztec Land and Cattle Company, confirms that each client remains committed to settlement. Mr. Staudenmaier states that Phelps Dodge has had a long-standing offer on the table regarding Blue Ridge Reservoir. Mr. Staudenmaier advises that he has not seen the proposed Zuni agreement, and has no comment in the "Zuni only" proposed settlement. Mr. Staudenmaier comments that it would make sense to have a comprehensive agreement rather than one standing alone, but reserves judgment until the proposal is final.

Mr. Charles Jakosa, representing the United States Department of Justice, advises that those representing the Department of the Interior and Department of Justice who have spoken earlier have adequately stated the United States' position. Mr. Jakosa further states his belief that everything should be resolved at the same time and supports a comprehensive settlement.

Special Master John Thorson asks Mr. Walch if he would submit his settlement for approval as soon as the Arizona Supreme Court completes its administrative order for considering such settlements. Mr. Walch responds that he would be happy to "pave the way."

Ms. Alexandra Arboleda, representing the Arizona Department of Water Resources, reports that they are supportive of continued settlement discussions and have been working toward a resolution of outstanding issues.

Mr. Walch responds that the United States will be prepared to move forward with settlement regardless of any outstanding issues with the Arizona Department of Water Resources.

Mr. Adrian Hansen, representing the City of Flagstaff, reports on support of the Three Canyon Project.

The Court urges all parties to work together in the belief that agreement on the outstanding issues may be close.

The Court addresses the problems concerning the mailing list, and the Report filed by the Special Master on March 31, 2000.

On September 23, 1994, the Arizona Department of Water Resources released the preliminary hydrographic survey report (HSR) for Indian lands. Later that year, Judge Allen G. Minker ordered a stay of the comment period on the preliminary HSR.

IT IS ORDERED lifting the stay and reopening the comment period until **June 30, 2000**. Comments are to be filed with ADWR, and a notice of filing the comments filed with the Clerk and served on the Court-approved mailing list. Comments will be available for public inspection at ADWR after July 10, 2000. Questions about the preliminary HSR and comment procedures should be addressed to ADWR.

The Court states that a proposed pretrial order concerning notice of preliminary and final hydrographic survey reports will be attached to this minute entry.

IT IS FURTHER ORDERED comments to the proposed pretrial order shall be filed on or before **Friday, May 26, 2000**.

There is discussion regarding a date for the next hearing which will be set as a Pretrial Conference.

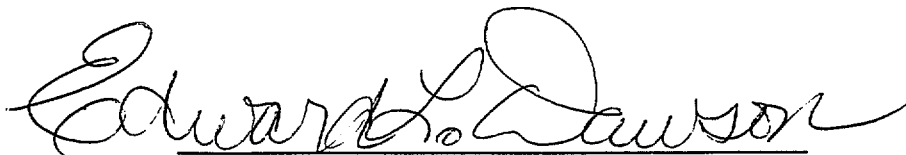
IT IS FURTHER ORDERED that a Pretrial Conference concerning tribal water right claims be set for **Thursday, August 3, 2000 at 9:30 a.m.** in the Apache County Superior Court.

The Court advises that it does not appear necessary to deal with other pending motions at this time. Upon the Court's inquiry, there are no responses regarding items to be included on the agenda.

1:55 p.m. Status Conference is adjourned.

ADDENDUM

IT IS FURTHER ORDERED approving the APPLICATION FOR EX PARTE ORDER APPROVING SUBSTITUTION OF COUNSEL AND AMENDING MAILING LIST filed on December 10, 1999, by attorneys for Phelps Dodge and substituting Ryley, Carlock & Applewhite and Phelps Dodge corporate counsel for Jerry Haggard. Jerry Haggard will be removed from the Little Colorado Court-approved mailing list.



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

EDWARD L. DAWSON
JUDGE OF THE SUPERIOR COURT

On this 5th day of May, 2000 a copy of the foregoing is mailed to those parties who appear on the Court-approved mailing list for Civil No. 6417 dated November 16, 1999.


Carolyn Morrow, Deputy

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D R A F T

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL ADJUDICATION OF
ALL RIGHTS TO USE WATER IN THE
LITTLE COLORADO RIVER SYSTEM AND
SOURCE

CIVIL NO. 6417
PRETRIAL ORDER NO. ____
RE: NOTICE OF HYDROGRAPHIC
SURVEY REPORTS

Pursuant to the authority vested in this Court by Section 45-259, ARIZ. REV. STAT., and Rule 16 of the ARIZONA RULES OF CIVIL PROCEDURE, the Court hereby enters the following order concerning the notice to be given by the Arizona Department of Water Resources ("Department") of the issuance or filing of hydrographic survey reports ("HSRs"):

1. Definitions

A. "Claimant" means a person who has filed a statement of claimant in the Little Colorado River adjudication under the provisions of ARIZ. REV. STAT. § 45-254, or a person to whom a previously filed statement of claimant has been assigned.

B. "Nonclaimant water user" means a person who has been identified by the Department as currently using water within the geographic area covered by the HSR.

1 2. Notice of Preliminary HSR

2 After the Department has completed a preliminary HSR for a watershed or
3 for an Indian or federal reservation, or any portion of such watershed or reservation
4 as specified by the Court, the Department shall provide notice thereof in the
5 following manner:

6 A. The Department shall file a notice with the clerk of the court.
7 The notice will specify where the preliminary HSR is available for inspection or
8 purchase, the deadline and procedure for submitting comments on the preliminary
9 HSR, and procedures for obtaining additional information.

10 B. The Department shall issue a press release containing the
11 information stated in the court notice. The Department shall publish the press
12 release on the Department's internet web site and in newspapers of general
13 circulation throughout the Little Colorado River adjudication area.

14 C. The Department shall send a copy of the court notice by first-
15 class mail to those persons included on the court-approved mailing list and to each
16 claimant and non-claimant water user in the geographic area covered by the
17 preliminary HSR.

18 D. If the preliminary HSR was prepared for a watershed, the
19 Department shall send by first-class mail to each claimant and nonclaimant water
20 user that portion of the preliminary HSR describing each specific water use or claim
21 by that person.

22 E. If the preliminary HSR was prepared for an Indian reservation,
23 the Department shall provide a copy of the entire preliminary HSR to the tribal
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1 representative for the Indian reservation and to the United States in its capacity as
2 trustee for the Indian tribe. If the preliminary HSR was prepared for another federal
3 reservation, the Department shall provide a copy of the entire preliminary HSR to
4 the United States.

5 F. Within a tribal or federal reservation, the Department shall
6 identify claims or water uses associated with allotted or fee land owned by persons
7 other than the tribe or the United States. For each specific water use or claim on
8 such allotted or fee land, the Department shall send by first-class mail to each
9 claimant and non-claimant water user that portion of the preliminary HSR
10 describing each specific water use or claim by that person. In the event that the
11 ownership of allotted or fee land within a reservation cannot be reasonably
12 ascertained, the Department shall publish a copy of the court notice in the manner
13 specified by Rule 4.2(f), ARIZONA RULES OF CIVIL PROCEDURE. The Department shall
14 also publish the notice in the county in which the land is located.

15 **3. Inspection of Preliminary Report**

16 After the Department has completed a preliminary HSR for a watershed or
17 reservation, or any portion of such watershed or reservation as specified by the
18 Court, the Department shall make copies of the preliminary HSR available for
19 inspection and purchase in the following manner:

20 A. The Department shall file a copy of the preliminary HSR with
21 the clerk of the court.

1 B. The Department shall provide copies of the preliminary HSR to
2 county court clerks and public libraries located throughout the Little Colorado River
3 adjudication area.

4 C. The Department shall make copies of the preliminary HSR
5 available for purchase at the Department's main office. The Department shall also
6 make copies of the preliminary HSR available for inspection at each of the
7 Department's active management area offices.

8 D. The Department shall undertake reasonable efforts to make the
9 preliminary HSR available in an electronic format.

10 4. Comments on Preliminary HSR

11 A. The Department shall establish a deadline for submitting
12 comments to the Department on a preliminary HSR. The deadline shall be
13 included in the notice of the preliminary HSR filed with the clerk of the court
14 pursuant to paragraph 2 of this order and shall be no less than 90 days after filing the
15 notice.

16 B. With the Court's approval, the Department may extend the
17 deadline for submitting comments on the preliminary HSR. The Department shall
18 provide notice of any approved extension of the comment period in the same
19 manner as the original notice under paragraph 2 of this order.

20 C. With the Court's approval, the Department may revise the
21 preliminary HSR and issue another preliminary HSR. The notice of additional
22 preliminary HSRs will comply with this order.

1 **5. Final Hydrographic Survey Report (HSR)**

2 After the Department has completed the procedures required under
3 paragraphs 2 through 4 of this order, the Department shall prepare a final HSR and
4 provide notice thereof in the following manner:

5 A. At least 120 days before the final HSR is published, the
6 Department shall file a notice with the clerk of the court. This 120-day notice shall
7 state the date on which the final HSR is to be filed and the deadlines for filing a new
8 statement of claimant or amendment to an existing statement of claimant as
9 provided by ARIZ. REV. STAT. § 45-254. The Department shall send a copy of this 120-
10 day notice by first-class mail to all persons listed on the court-approved mailing list,
11 all claimants in the geographic area covered by the final HSR, and all non-claimant
12 water users in the geographic area covered by the final HSR.

13 B. Upon filing the final HSR with the clerk of the court, the
14 Department shall also file a notice of commencement of the objection period with
15 the clerk of the court. This objection notice shall specify where the final HSR will be
16 available for inspection or purchase, the deadline and procedure for submitting
17 objections to the final HSR, and the procedures for obtaining additional
18 information. If a special master has been appointed, the notice may be combined
19 with any additional information required by the master.

20 C. The Department shall issue a press release containing the
21 information stated in the objection notice. The Department shall publish the press
22 release on its internet web site and in newspapers of general circulation throughout
23 the Little Colorado River adjudication area.

1 D. The Department shall send a copy of the objection notice by first-
2 class mail to those persons included on the court-approved mailing list, to each
3 claimant and nonclaimant water user in the geographic area covered by the final
4 HSR, and to every other claimant in the Little Colorado River adjudication.

5 E. If the final HSR was prepared for a watershed, the Department
6 shall send with the objection notice to each claimant and nonclaimant water user
7 that portion of the final HSR describing each specific water use or claim by that
8 person.

9 F. If the final HSR was prepared for an Indian reservation, the
10 Department shall provide a copy of the objection notice and the entire final HSR to
11 the tribal representative for the Indian reservation and to the United States in its
12 capacity as trustee for the Indian tribe. If the final HSR was prepared for another
13 federal reservation, the Department shall provide a copy of the objection notice and
14 the entire final HSR to the United States.

15 G. If the Department has identified claims or water uses associated
16 with allotted or fee land, as discussed in paragraph 2(F) of this Order, the
17 Department shall send by first-class mail to each claimant and non-claimant water
18 user a copy of the objection notice and that portion of the final HSR describing each
19 specific water use or claim by that person. In the event that the ownership of
20 allotted or fee land within a reservation cannot be reasonably ascertained, the
21 Department shall publish a copy of the objection notice in the manner specified by
22 Rule 4.2(f), ARIZONA RULES OF CIVIL PROCEDURE. The Department shall also publish
23 the objection notice in the county in which the land is located.
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