

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 ( ) IN OPEN COURT (X)

THE HONORABLE EDWARD L. DAWSON SUE HALL, Clerk  
Visiting Judge

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 22, 1999

TIME: 9:35 a.m.

CIVIL NO. 6417

DESCRIPTIVE SUMMARY:	Status Conference held in the Apache County Superior Courtroom, St. Johns, Arizona.
NUMBER OF PAGES:	6
DATE OF FILING:	May 4, 1999

**MINUTE ENTRY**

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

Courtroom Reporter: Susan Humphrey.

**APPEARANCES**

Following brief opening remarks, the Court calls for appearances and they include the following: Alexandra Arboleda and Michael Pearce representing the Arizona Department of Water Resources; Mr. Scott McElroy and Mr. Stanley Pollack, representing the Navajo Nation; Mr. Wallace Tanner, representing Escudilla Cattle Company; Mr. Pete Shumway, representing LCR counties; Mr. David A. Brown, representing various claimants; Mr. Lauren J. Caster, 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. Reid Chambers and Mr. Scott Canty representing the Hopi Tribe; two representatives of the Hopi Tribe who did not sign in, and whose names were not audible to the clerk; Mr. Alan Matheson, representing Arizona Public Service; Mr. William Staudenmaier and Mr. Michael J. Brophy, representing Arizona Public Service and Aztec Land and Cattle Company; Ms. Dawn Meidinger and Ms. Cynthia Chandley, representing the Phelps Dodge Corporation; Mr. Gordon Farr, representing the Jessie Slade Family Farm; two additional representatives of the Hopi Tribe who did not sign in, and whose names were not audible to the clerk; Mr. Mitchel D. Platt, representing various claimants; Ms. Lee Storey, representing the City of Flagstaff; Mr. William Darling, representing the Cameron Trading Post and Atkinson Trading Company; Mr. Robert Hoffman, representing Southern California Edison; Ms. Laurel Lacher, representing the White Minute Entry/Status Conference/April 22, 1999 Page 1 of 6

Mountain Apache Tribe; Mr. Lyman Polacca representing the Hopi Tribe; Mr. Andrew F. Walch, representing the United States National Park Service, Forest Service and Bureau of Land Management; Mr. Peter Fahmy, representing the Office of the Solicitor, Department of the Interior; Mr. Bradley S. Bridgewater, representing the United States; Mr. John Cawley, Department of the Interior/Bureau of Indian Affairs; Mr. Johnnie D. Francis, representing the Navajo Nation Department of Water Resources; Mr. Don Young, representing the Arizona Attorney General's Office; Mr. Jerry Sako, representing Arizona State Parks; Mr. Joe Clifford, representing the Arizona Attorney General's Office; Mr. Wilfred Eriacho, Sr., Mr. Ed Vicenti, Ms. Susan Williams, Ms. Jane Marx, and Ms. Joan Cheama, representing the Pueblo of Zuni; a representative of the City of Winslow whose name was not audible to the clerk and who did not sign in; Mr. Jim Boles, Mayor of the City of Winslow; Mr. Frederic Beeson, Mr. John B. Weldon Jr., Ms. Brenda Burman, and Mr. Craig Sommers, representing Salt River Project. Three additional parties were in attendance, but those names were inaudible and were not indicated on the sign-in sheet provided.

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.

The Court acknowledges the work that has been done in this matter, comments regarding the existing hope of a successful settlement and recognizes Judge Michael C. Nelson in particular for his outstanding work as settlement judge.

## **REPORTS**

The Court welcomes those in attendance and requests that reports regarding the status of affairs be presented. The Court calls Mr. Reid Chambers, representing the Hopi Tribe, to report.

Mr. Chambers reports from the perspective of the Hopi Tribe, stating his hopes that any outstanding issues will be resolved in the near future. Mr. Chambers comments that the issues between the Hopi and Navajo Tribes are virtually resolved, but that additional funds may be necessary for water to be delivered to Third Mesa. Mr. Chambers adds his compliments to Judge Nelson for his work in this matter.

The Court indicates that the report by the settlement committee has been reviewed and requests that any imperative matters that may be pending be brought to the Court's attention. The Court then calls Mr. Stanley Pollack to report.

Mr. Pollack, representing the Navajo Nation, apologizes for the late delivery of the Status Report, and also for the omission of appreciation to Judge Nelson for his work with the committee. Mr. Pollack comments on the magnitude of this settlement and refers to a map that has been displayed on the Courtroom wall. Mr. Pollack comments further on the text boxes on the map, what the boxes represent, and outlining the various projects. Mr. Pollack offers to provide a copy of the map to the Court. Mr. Pollack concludes by emphasizing the importance that all parties involved give the settlement their "best shot" proposing that all parties sit down to formalize a list of "bottom-line" issues, acknowledging that some issues go beyond the control of the settlement committee.

The Court inquires about the reality of settlement and a possible time frame.

Mr. Pollack responds that he does not know if agreement can be reached before a suggested June deadline and doubts that legislation can be passed this year. Funding for the settlement is discussed including necessary legislation changes regarding state and federal funds. Mr. Pollack further responds requesting Minute Entry/Status Conference/April 22, 1999 Page 2 of 6

that the judicial branch “free up” Judge Nelson’s time for his efforts in the settlement.

The Court calls for comments from Mr. Bridgewater, representing the United States.

Mr. Bridgewater addresses the Court, stating that he does not have a great deal to add to the remarks already made in this hearing. Mr. Bridgewater states his concerns about any loss in momentum or incentive and encourages the Court to keep all the parties accountable.

The Court calls for comments from Mr. Clifford, representing the Attorney General’s Office.

Mr. Clifford states that he has nothing to add to the previous remarks concerning settlement. Mr. Clifford advises that the Attorney General’s Office represents capacities of two different interests, those being the State Land Department and the State Fish and Game Department. Mr. Clifford further advises that the issues involving the land department appear to be on target, and that progress is being made regarding the game and fish department with no foreseeable impediments.

The Court calls for comments from Ms. Marx, on behalf of the Zuni Pueblo.

Ms. Jane Marx explains the desire and hope for restoration of the land allowing the Zuni Pueblo the ability to practice ancient religious rituals. Ms. Marx states that acquisition of groundwater is a goal. Ms. Marx advises that a plan for acquisition has been formulated, but that additional work remains. Ms. Marx encourages the Court to grant additional time in this matter.

The Court asks Ms. Marx about a minimum time frame, and Ms. Marx responds by guessing that it may take a few additional months.

The Court inquires if Ms. Jeanne S. Whiteing is present in the Courtroom, or if there is anyone representing the San Juan Southern Paiute Tribe. Ms. Whiteing is not present and no other representative of the tribe appears. The Court calls for comments from Mr. Weldon, representing the Salt River Project.

Mr. Weldon agrees that the parties have been working toward a settlement for a long time, but that although progress is being made, there are still a number of “bottom-line” issues that remain to be addressed. Mr. Weldon states the concerns of Salt River Project regarding the cost of this settlement. Mr. Weldon advises that the three main interests of Salt River Project are:

- Ô Coronado Generating Station near St. Johns
- Ô Navajo Generating Station in Page
- Ô Mohave Generating Station in Laughlin

Mr. Weldon comments on the expense of the pipeline project and requests that the Court continue to ask for hard and fast time deadlines in these issues, adding that an alternative would be for the parties to either reach an agreement or go to litigation.

The Court comments on his experience as a trial judge and remarks on the mutual respect that has been shown in these proceedings. The Court expresses the hope that a settlement agreement might soon be reached. The Court additionally states the desire to move the process along as fast as possible without upsetting the delicate balance now in place.

The Court calls for comments from Mr. Brophy, representing Aztec Land and Cattle Company and Minute Entry/Status Conference/April 22, 1999 Page 3 of 6

Arizona Public Service.

Mr. Michael J. Brophy defers to Mr. William Staudenmaier. Mr. Staudenmaier comments regarding the twenty-one years time length of this case, including the genuine progress made in the last four years. Mr. Staudenmaier observes that most progress has been made under pressure, and urges the Court to continue to impose deadlines and the scheduling of frequent Status Conferences. Mr. Staudenmaier requests the scheduling of another Status Conference in early summer of this year. Mr. Staudenmaier advises that Aztec Land and Cattle Company is primarily an interested observer whose interests will be protected under the proposed plan and who will be a participant in the proposed settlement. Mr. Staudenmaier describes a petition to the Supreme Court, in the process of being drafted, which will contain a proposed order regarding setting procedures, and states that it will be submitted in the near future.

The Court calls for comments from Mr. Walch.

Mr. Andrew F. Walch, representing the United States, informs the Court that the United States owns seventy per cent (70%) of the land in the Little Colorado River basin, with the bulk being in tribal reservations. Mr. Walch comments on the progress being made in the settlement procedure. Mr. Walch mentions the three United States agencies involved, including the Bureau of Land Management, the National Parks Service and the National Forest Service. Mr. Walch concludes his remarks by stating his optimism that a successful solution can be reached, and his hope that a trial situation may be avoided.

The Court calls for comments from the Phelps Dodge Corporation.

Ms. Cynthia Chandley states that the concerns of the Phelps Dodge Corporation involve Show Low Lake and the Blue Ridge Reservoir, advising that an agreement has been worked out with the Gila River Indian Community. Ms. Chandley submits a copy of the Settlement Agreement to the Court.

The Court calls for comments from Mr. Caster, 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. Lauren J. Caster advises that he has nothing to add to the comments made in Court this day, unless the Court has specific questions to be addressed.

The Court calls for comments from Southern California Edison.

Mr. Robert Hoffman expresses regret for the fact that some of his colleagues and company representatives are not able to appear for this hearing. Mr. Hoffman explains that Southern California Edison is not a claimant in this matter, but simply a user and trying diligently in the attempt for settlement.

The Court calls for comments from Mr. David Brown, representing various claimants.

Mr. Brown advises that his clients are in the position to want settlement, being fearful of the present political climate and the ability to get money proposed for the settlement. Mr. Brown expresses thanks to the Court for the time and efforts made in this pursuit.

The Court calls for comments from Mr. Platt, representing various claimants.

Mr. Mitchel Platt states that he has nothing to add to the comments already presented this day.

Upon the Court's inquiry, Ms. Laurel Laucher, representing the White Mountain Apache Tribe, advises that she is present as an observer only for the hearing this day.

The Court calls for comments from the Arizona Department of Water Resources, with comments pertaining to things other than the motion presently before the Court.

Mr. Michael Pearce provides a brief history of the Department of Water Resources' position in this proceeding. Mr. Pearce describes the department's attempt to remain neutral, and explains that the department is now active because of legal changes being requested.

Mr. Walch objects to the statements being given by Mr. Pearce, stating that they pertain to the motion currently before the Court.

The Court expresses the interest of hearing comments made by Mr. Pearce and allows him to continue.

Mr. Pearce continues with concerns regarding seven issues of interest to the Arizona Department of Water Resources.

The Court calls for comments from Ms. Storey.

Ms. Lee Storey advises that most of the issues between the City of Flagstaff and the National Park Service have been resolved, but there are remaining issues with the National Forest Service that need to be resolved. Ms. Storey states that she is hopeful that the process will continue to go forward, and urges the Court to continue in this effort.

10:45 a.m. Hearing stands in recess.

11:00 a.m. Hearing resumes with respective parties present.

The Court calls for additional comments from Mr. Robert Hoffman, this time representing Central Arizona Water Conservation District.

Mr. Hoffman responds to the Court's inquiry, commenting further regarding state and federal issues and financial effects.

The Court observes the need to continue with all deliberate haste, since matters do not remain "frozen in time." The Court additionally acknowledges the exceptional work done by Judge Nelson in his capacity as Settlement Judge.

IT IS ORDERED that the portion of the Motion to Vacate Portion of Minute Order dated December 16, 1998 as amended on February 24, 1999, concerning the filing of a joint status report, is GRANTED with no opposition. No such report needs to be filed with the Court.

The Court advises that time remains on the remainder of the United States' motion before the Court, (May 5, 1999), no responses having been received, and no opposition having been presented as of this date. The Court further advises that his decision will be made on this motion at a later time. In the future, there will be no oral hearings on motions unless specifically requested by the parties.

Following brief discussion of scheduling another Status Conference,

IT IS FURTHER ORDERED that an additional Status Conference be set for **Thursday, July 15, 1999 at 9:30 a.m.** in the Apache County Superior Court.

11:15 a.m. Status Conference is adjourned.

**EDWARD L. DAWSON**  
JUDGE OF THE SUPERIOR COURT

The original of the foregoing filed with the Superior Court Clerk of Apache County.  
Minute Entry/Status Conference/April 22, 1999 Page 6 of 6  
On this \_\_\_\_ day of \_\_\_\_\_, 1999, a copy of the foregoing is mailed to those parties who appear on the Court-approved mailing list for Civil No. 6417 dated February 8, 1999.