

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

04/19/2011

CLERK OF THE COURT
FORM V000

SPECIAL MASTER GEORGE A. SCHADE, JR.

L.Timpauer
Deputy

FILED: 04/21/2011

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

CV 6417-201

In Re Telephonic Status Conference Regarding
Settlement Negotiations of the Claims of the
Hopi Tribe and the Navajo Nation

MINUTE ENTRY

9:31 a.m. In chambers. This is the time set for a Telephonic Conference pursuant to the Special Master's Order of January 24, 2010, for the purpose of updating the Special Master on the status of the proposed Water Rights Settlement Agreement and the Final Hopi Indian Reservation HSR. Appearing telephonically are: L. William Staudenmaier on behalf of Arizona Public Service; Sara Ransom on behalf of City of Flagstaff; Theresa M. Craig on behalf of the Arizona Attorney General's Office, Natural Resources Section; Stanley M. Pollack, Bidtah N. Becker, Scott B. McElroy, and Kate Hoover on behalf of the Navajo Nation; Mark A. McGinnis, John B. Weldon, and Patrick B. Sigl on behalf of Salt River Project; David A. Brown and Douglas E. Brown on behalf of various Little Colorado River claimants; Lauren J. Caster and Gregory L. Adams on behalf of Catalyst Paper (Snowflake) Inc.; Janet L. Ronald on behalf of the Arizona Department of Water Resources; Martin P. Clare, Reid Peyton Chambers, and Colin Cloud Hampson on behalf of the Hopi Tribe; Vanessa Boyd Willard on behalf of the United States Department of Justice, Indian Resources Section; and Stephen G. Bartell on behalf of the U.S. Department of Justice, Environmental and Natural Resources Division. Present in chambers is Special Master, George A. Schade, Jr.

Court reporter, Traci Stutsman, is present.

The matters to be discussed at today's hearing are:

- Status of the settlement agreement;

- Status of any pending deadlines in the case of *In Re Hopi Tribe Priority*; and
- Status of the Final Hopi Reservation HSR.

Special Master Schade invites Mr. Pollack to update the Court as to the current status of the settlement agreement.

Mr. Stanley M. Pollack informs the Special Master that he recently filed a Status Report with the US District Court but did not file one with this Court. The federal court status report detailed the recent meeting of the Arizona delegation with Senator Jon Kyl. Mr. Pollack reports that Senator Kyl found that the proposed settlement is too expensive, thus, the Senator is unwilling to introduce legislation to authorize settlement in its current form given the current political and fiscal climate in Washington. Senator Kyl plans to retire at the end of the current Congress and encouraged the parties to reach new settlement language by June 2011 so that he might submit legislation to Congress prior to his retirement. Mr. Pollack further informs the Special Master that the parties have been working together on the settlement and are next scheduled to meet with the Senator on Wednesday, April 27, 2011, to discuss the possible terms of settlement. Mr. Pollack notes that the Navajo Nation Council had approved the prior settlement agreement in November 2010. The terms of that agreement are no longer up for consideration because it does not have a chance for success in Congress. Any new settlement terms will still require approval by the parties and the Navajo Nation Council. Mr. Pollack does not anticipate that the terms of a settlement will be approved by the parties by the time federal legislation is introduced.

Mr. Pollack informs the Special Master that the parties have requested a four month extension of the stay in the Federal Court matter anticipating that within that time, the parties will know whether they have terms that the Senator can support or not.

Mr. Pollack requests that the Special Master extend the stay in the present matter by four months.

Mr. Clare echoes Mr. Pollack's statements regarding the status of the settlement and discussions with Senator Kyl. Mr. Clare notes that the terms of a revised settlement agreement are also going to require approval by the Hopi Council and therefore requests a six month extension of the stay in this matter rather than the four months requested by Mr. Pollack.

Mr. Caster references Senator Kyl's specific directions that new settlement language must be presented by June 2011 for there to be any chance to introduce legislation. Accordingly, Mr. Caster believes that a four month extension to the stay would be appropriate.

The Special Master suggests that it may be appropriate to ask the settling parties file a Joint Status Report by June 30, 2011.

Mr. Clare and Ms. Ransom have no objection to the Joint Status Report.

Mr. Weldon notes that it is presently unclear whether the revised terms of settlement will be as comprehensive with respect to both tribes as was previously anticipated. Mr. Weldon further states that he is in favor of a four month stay of proceedings as by that time, the terms of the settlement will be clear.

For the reasons put forth by the parties, Ms. Willard supports a four month extension.

The Special Master clarifies the interpretation of a four month extension. The current case would be held and no activity would occur for the next four months which would take the parties into August 2011. The Special Master invites the parties to comment on this interpretation.

Mr. Weldon is agreeable to a four month stay of proceedings, as specified by the Special Master.

Discussion is held as to whether the Arizona Department of Water Resources (“the Department”) should continue work on the Final Hopi Reservation HSR. The Special Master notes the fiscal condition of the Department and questions whether the HSR work should continue or should be held so that resources may be used for other activities. The Special Master asks Ms. Ronald as to whether the Department is doing any work on the Hopi HSR at this time.

Ms. Ronald informs the Special Master that there is currently no work being done on the Hopi HSR. However, some work has been done in the past in response to issues arising out of the 2009 amended claims, including communications with the United States and the Hopi Tribe requesting clarification and further information concerning the claims. That work has not been completed and due to the parties’ involvement in the current settlement negotiations, communications to this regard may be delayed. Ms. Ronald notes that if work were to go forward on the HSR, there would be a possibility that limited field work could be done this summer.

Ms. Ronald notes the deadline of April 2012 for the SPRINCA Report. There will be a hearing this summer or fall relating to the Subflow Zone Delineation Report for the San Pedro River Watershed and it is currently unclear as to whether there will be any additional work required of the Department. There has been ongoing field work in the *Sands* cases but there are no pending deadlines in those matters. The field work has proven difficult due to the time that has transpired since Special Master Thorson’s 1994 Report. The Gila River Maintenance Area Update is due by the end of 2012. Ms. Ronald notes that if work goes forward on the Hopi HSR, progress may be interrupted by the aforementioned tasks.

The Special Master invites comments on what Ms. Ronald has reported.

Mr. Clare states that work on the Hopi Tribe HSR should move forward to take advantage of any time and/or resources available now before other projects take priority.

The Special Master notes that Judge Ballinger directed the Department to work on the HSR and encourages the Department to move forward on the HSR in the best way possible given fiscal restraints. The Special Master further encourages that field work take place this summer if it can be done.

Based upon the information provided and the positions of the respective parties, the Special Master orders **extending the stay of proceedings until September 7, 2011**.

The Special Master further requests Messrs. Pollack and Clare to file a report no later than **June 30, 2011**, as to the status of the congressional legislation.

The Special Master further orders setting a Telephonic Status Conference on **Wednesday, September 7, 2011, at 9:30 a.m.** Mountain Standard Time for the purpose of discussing restarting this contested case depending on the status of the settlement agreement. The parties who wish to participate in the conference will call 1-866-921-2203, press the star key (*), dial the room number 2743132, and press the star key again. The star key must be pressed before and after the room number. Each participant will bear any long distance telephonic charges.

There are no objections from the parties as to these orders.

The Special Master encourages the Department of Water Resources to continue its best work on the Hopi HSR.

The Special Master inquires as to the status of the settlement committee meeting that Judge Ballinger directed to be held.

Mr. Weldon informs the Special Master that to date, no arrangements have been made. Mr. David Brown informs the Special Master of the efforts he is aware of that have been made to coordinate with Mr. Bartell and that he anticipates a settlement committee meeting to occur prior to June 1, 2011. Mr. Bartell states that he looks forward to scheduling the matter.

10:03 a.m. Matter concludes.

A copy of this order is mailed to all parties on the Court-approved mailing list for the Little Colorado River Adjudication Civil No. 6417-201 dated January 12, 2011.