

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

09/07/2011

CLERK OF THE COURT
FORM V000

SPECIAL MASTER GEORGE A. SCHADE, JR.

J. Polanco
Deputy

FILED: 09/12/2011

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 Status Conference pursuant to the Special Master's Order of April 19, 2011, for the purpose of updating the Special Master on the status of restarting this contested case and the status of the HSR for the Hopi Tribe. Appearing telephonically are: Janet L. Ronald on behalf of the Arizona Department of Water Resources; Stanley M. Pollack, Bidtah N. Becker, Scott B. McElroy, Daniel E. Steuer, and Kate Hoover on behalf of the Navajo Nation; Martin P. Clare and Joseph P. Mentor, Jr. on behalf of the Hopi Tribe; Leroy Shingoitewa, Chairman of the Hopi Tribe; John B. Weldon, Jr. and Patrick B. Sigl on behalf of Salt River Project; Laurel A. Herrmann on behalf of the San Carlos Apache Tribe and Tonto Apache Tribe; L. William Staudenmaier and Michael T. Kafka on behalf of Arizona Public Service; Lauren J. Caster and Gregory L. Adams on behalf of Catalyst Paper (Snowflake) Inc.; Stephen G. Bartell on behalf of the U.S. Department of Justice, Environmental and Natural Resources Division; Vanessa Boyd Willard and Andrew "Guss" Guarino on behalf of the United States Department of Justice, Indian Resources Section; Theresa M. Craig and Kristina Fredericksen on behalf of the Arizona Attorney General's Office, Natural Resources Section; Daniel L. Brown and Douglas E. Kupel on behalf of the City of Phoenix; and Douglas E. Brown on behalf of various Little Colorado River claimants. Present in chambers are Special Master, George A. Schade, Jr., and assistant Barbara K. Brown.

Court Reporter, Kristen Brown, is present.

Special Master Schade advises the parties that he was pleased to receive the two recent pleadings filed by the Hopi Tribe and Navajo Nation to restart litigation in this contested case and invites Mr. Clare to add any additional comments to the pleading that was filed yesterday.

Mr. Martin P. Clare defers to Mr. Mentor to speak on behalf of the Hopi Tribe today. Mr. Joseph P. Mentor, Jr. informs the Special Master that he is new to the case and recently filed a motion to appear pro hac vice, but has yet to receive confirmation of its acceptance.

Mr. Mentor addresses the Special Master with regard to the Navajo Nation's Motion to Set a Briefing Schedule. Mr. Mentor notes the need to develop and establish a reasonable schedule in which to resume work on the case. Mr. Mentor further advises the Special Master that he believes summary judgment motions have been filed by all parties and that he is currently working to complete the review of these motions, however, the materials available for review are currently in transition from the offices of the Hopi Tribe's former counsel in Washington, D.C. to the Tribal attorney's office in Flagstaff. In light of the foregoing, Mr. Mentor requests a short period of time to allow the records to reach the Tribal attorney's office and for all of the material to be reviewed, so that an appropriate Response may be filed. As to discovery concerning the Spanish and Mexican claims, Mr. Mentor also requests reasonable time to become familiarized with the claims and the evidence available for review. Mr. Mentor further advises the Special Master he has not had the opportunity to meet with the Hopi Tribe's expert witness and would like an opportunity to do so.

Special Master Schade inquires of Mr. Mentor whether the proposed deadlines set forth in the pleading filed by Mr. Clare yesterday are acceptable.

Mr. Mentor states that the dates are acceptable.

The Special Master inquires as to the Navajo Nation's response to the briefing schedule proposed by the Hopi Tribe.

Mr. Scott B. McElroy advises the Court that the Navajo Nation's preference would be to set dates earlier than what are proposed. However, in light of the explanation provided by Mr. Mentor and his necessity to familiarize himself with the case, he will not object to the additional time requested.

Special Master Schade further clarifies his expectation that once deadlines are set, they are to be firm. The Special Master invites additional comments regarding the proposed dates.

Ms. Vanessa Boyd Willard advises the Special Master that from the United States Department of Justice's perspective, the proposed dates are reasonable.

Mr. John B. Weldon concurs with Ms. Willard's comments.

Mr. Lauren J. Caster advises the Special Master that the proposed deadlines may conflict with the parties' preparation for the Subflow evidentiary hearing. Mr. Caster proposes that no deadlines be set in January through mid February to avoid any overlap with the upcoming Subflow proceedings set before Judge Ballinger.

Mr. Caster further addresses the Special Master with regard to the possibility of the Arizona Supreme Court which may, at anytime, schedule a conference on the Hopi Appeal and Trust Lands Appeal. Special Master Schade acknowledges the pending Interrogatory Appeals before the Supreme Court and the possibility of an upcoming ruling.

The Special Master invites additional comments.

Mr. Douglas E. Brown addresses the Special Master with regard to the last paragraph contained in the Hopi Tribe's Response pertaining to how the case is proceeding.

In that regard, Special Master Schade explains that should the Hopi Tribe deem it necessary, they may request Judge Ballinger to undertake some additional briefing, start a new contested case, or refer a matter to the Special Master.

The Special Master suggests a briefing schedule with Responses due in December and Replies due 40 days thereafter.

In light of the Subflow trial scheduled for the end of January and a number of the respective parties and counsel being involved in the same, Mr. Castor requests that the Special Master depart from the 40 day timeframe and allow additional time for Replies to be filed.

The Special Master invites comments regarding the same.

Further discussion is held regarding the suggested deadlines for the Responses and Replies. Based on the information provided and there being no contrary opinions, the Special Master orders that **Responses shall be due by Tuesday, December 20, 2011 and Replies shall be due by Wednesday, February 15, 2012.**

The Special Master addresses the Spanish and Mexican claims and acknowledges Mr. Mentor's request for additional time to speak with the Hopi Tribe's expert witness and Mr. Clare's suggestion for a telephonic conference on October 5, 2011. The Special Master inquires as to whether the parties feel they can prepare a briefing schedule regarding the Spanish and Mexican law rights issues.

Discussion is held regarding the preparation of a deposition schedule and suggested briefing schedule. Mr. McElroy advises the Special Master in that regard, a month should be sufficient time to prepare such a schedule.

The Special Master inquires of Mr. McElroy whether the discovery on the Spanish and Mexican law rights issues has been completed.

Mr. McElroy informs the Special Master that discovery has not yet been completed. The depositions of the Spanish and Mexican law experts were postponed because the Hopi Tribe's expert had to withdraw and has passed away. A new Hopi Tribe expert has since been obtained and supplemental reports were filed. The expert reports have been completed, but depositions have not been completed.

The Special Master addresses the parties with regard to establishing deadlines in the Spanish and Mexican law rights for the completion of discovery and filing of Motions, Responses and Replies. The Special Master informs the parties his preference would be for discovery to be completed and motions to be filed no later than the spring of 2012.

Mr. McElroy informs the Special Master that he is agreeable to the proposed timeframe, but does acknowledge a scheduling conflict that makes deposing their expert difficult.

The Special Master inquires as to Mr. Mentor's position on the briefing schedule.

Mr. Mentor informs the Special Master that he can not with certainty agree to the briefing schedule proposed by the Navajo Nation, without the opportunity to first meet with his expert. Mr. Mentor suggests setting a date 45 days from now for the parties to submit a stipulation to the Special Master.

Mr. McElroy, Mr. Mentor and Ms. Willard are all agreeable to that timeframe.

Based upon the information provided and the positions of the respective parties, the Special Master orders that the United States, the Navajo Nation and the Hopi Tribe shall file a **Joint Status Report on or before Friday, October 7, 2011** setting forth a proposed briefing schedule with dates for the conclusion of discovery and the filing of motions on the Spanish and Mexican law rights issues.

The Special Master further clarifies how the Hopi Tribe may address the issues raised in their motion as to priority dates and discussion is held regarding the same.

Mr. Caster addresses the Special Master regarding the proposed briefing schedule to be submitted by the United States, the Navajo Nation and the Hopi Tribe. Although Mr. Caster does not have an expert on the Spanish and Mexican law rights issues, he would like the opportunity to review the proposed schedule as he may wish to participate in the briefing.

Mr. Weldon echoes Mr. Caster's request.

In that regard, the Special Master invites all of the parties to meet and discuss and participate in the preparation of the briefing schedule.

Ms. Willard suggests that the three governments meet initially and prepare a proposed schedule which shall then be provided to the other parties, keeping the lines of communication open between all parties.

In light of the foregoing discussion, the Special Master advises the parties that if they are unable to reach a stipulated scheduling order, any other party may file their position also on **October 7, 2011**. If there is complete agreement, the Joint Status Report shall be sufficient.

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

Ms. Sara Ransom advises the Special Master that due to earlier technical difficulties she was not present at the onset of the conference, but is now present on behalf of the City of Flagstaff.

The Special Master asks Ms. Janet L. Ronald to update the Court as to the status of the Department's work on the Hopi HSR at this time.

Ms. Ronald states that the Department is currently working on a report for the de minimis issues, which is due on Friday, September 9, 2011. Ms. Ronald notes the deadline in April 2012 for the SPRINCA Report. The reduced staffing has caused the work on the Hopi HSR to be put on hold while the Department addresses more immediate deadlines. Following the SPRINCA Report deadline, she expects the Department to resume work on the Hopi HSR.

The Special Master asks Ms. Ronald if there is an expected date as to when the Hopi HSR will be filed with the Court.

Ms. Ronald advises the Special Master that she can not provide a date at this time. The Department must meet with the reduced staff and review what work is necessary in order to complete the Hopi HSR.

The Special Master encourages the Department to make the completion of the Hopi HSR a priority and invites comments on what Ms. Ronald reported.

The Special Master acknowledges Mr. Mentor's pending Pro Hac Vice Application and advises a ruling should be forthcoming from Judge Ballinger. The Special Master invites Mr. Mentor to make any additional comments in light of his being new to the case.

Mr. Mentor advises the Special Master only that he looks forward to meeting him in person.

The Special Master reciprocates the sentiment. The Special Master advises the parties that an order will be prepared setting forth the dates as discussed today which will be provided by email to the respective parties.

10:20 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 July 25, 2011.