

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

Date 12/17/2019

CLERK OF THE COURT
FORM V000

SPECIAL WATER MASTER
SUSAN HARRIS

A. Hatfield

Deputy

FILED: 01/08/2020

In Re: The General Adjudication
of All Rights to Use Water in the
Gila River System and Source
W-1, W-2, W-3 and W-4 (Consolidated)

In re: Status Conference

MINUTE ENTRY

Courtroom: CCB 301

1:31 p.m. This is the time set for a Status Conference regarding a schedule for the Federal Government to Submit Statements of Claimant (“SOCs”) for Wilderness Areas Subject to the Gila River Adjudication.

The following attorneys appear in-person: Sean Hood on behalf of Freeport Minerals; Jay Tomkus and Susan Montgomery on behalf of Yavapai-Apache Nation and Pascua Yaqui Tribe; Michael Foy and John Weldon on behalf of Salt River Project (“SRP”); Charles Cahoy on behalf of City of Phoenix; Alexandra Arboleda on behalf of Cities of Tempe and Tombstone; David Gehlert on behalf of the United States; Daniel Haws on behalf of the U.S. Army; Kevin Crestin on behalf of the Arizona State Land Department; and Sonia Overholser on behalf of the United States Office of the Solicitor.

The following attorneys appear telephonically: William Anger on behalf of Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale; Patrick Barry and Lee Leininger on behalf the United States; John Burnside on behalf of BHP Copper; Lucas Christian on behalf of Tonto Apache Tribe; Amy Brown on behalf of numerous landowners in the Gila Valley, Clyde Halstead on behalf of the City of Prescott; Laurel Herrmann and Joseph Sparks on behalf of the San Carlos Apache Tribe; Mark Holycross on behalf of the U.S. Army; Kimberly Parks on behalf of the Arizona Department of Water Resources (“ADWR”); and Jenny Winkler on behalf of the City of Chandler.

Court reporter, Marylynn Lemoine, is present and a record of these proceedings is made digitally.

Mr. Hood addresses Freeport Minerals Corporation's *Motion for a Status Conference to Establish Schedule for the Federal Government to Submit Statements of Claimant for Wilderness Areas Subject to the Gila River Adjudication* filed September 24, 2019 and requests that the Court order the United States to file its claims for federal reserved water rights for its wilderness areas. He argues that 12 of the potential claims identified by the United States apply to the Verde River watershed and that six of those claims should be filed within one year and the remaining six should be filed within two years.

The Court confirms that the next watershed to be adjudicated in the Gila River Adjudication is the Verde River watershed. The Verde River watershed is divided into five sub-watersheds.

Discussion is held regarding the adjudication of the Verde River watershed, the five sub-watersheds, and the proper deadline for the United States to file its statements of claimant to allow ADWR to investigate those statements of claimant when it begins the process of preparing a hydrographic survey report (HSR) necessary for the adjudication.

Mr. Gehlert discusses the United States' proposal regarding deadlines to file SOCs on federal property and focus on claims in Verde River watershed. The United State would prefer to have its federal non-Indian reservation claims included in an HSR with all other claimants as has been the past practice.

Mr. Gehlert described the federal claims in the Verde River watershed by federal agency. He stated that he anticipates that the BLM will have no claims. The National Parks Service has two national monuments. The Forest Service has four national forests that have land located in the Verde basin and he anticipates that it will have thousands of claims. There are 15 wilderness areas in which some portion of the wilderness area, including Kachina Peaks, is located in the Verde basin. There are two wild and scenic rivers, Verde River and Fossil Creek. The Army has federal reserved claims for Camp Navajo, located in the northern portion of the basin. The Yavapai Tribe will also have federal reserved claims. The United States would like to coordinate filing its claims with ADWR to minimize the time between the filing of the claim and the time that ADWR begins its investigation.

Mr. Gehlert proposed that the National Parks Service would file its claim for Montezuma's Castle within 18 months because another field season is needed to collect data for the claim. The Army has one facility and expects it could file a claim in the same time frame. With respect to the Forest Service claims, Mr. Gehlert proposed that the first claim that would be filed would be the wild and scenic river claim for the Verde River. He stated that two field seasons are needed to collect data. Additional time is needed for Fossil Creek because of travertine formations that involves both water quality and water quantity issues. He did not provide a proposed date for filing a claim for Fossil Creek.

As to the wilderness areas, Mr. Gehlert described scientific research in process that will provide the scientific basis for the United States' wilderness area claims and support the development of a model. He also reported that the USGS will be conducting studies for three wilderness areas, Sycamore Canyon, Wet Beaver, and Mazatzal. The USGS is expected to deliver the results of its work to the Forest Service by August 2021. So by the fall of 2021 the Forest Service would have the tools to develop its claims but there are resource limitations to developing the claim.

The Court requested Mr. Gehlert to rank the claims by volume. Mr. Gehlert stated that the largest claim would be the wild and scenic river claim for Verde River but did not have enough information to rank the remainder.

Mr. Foy states that SRP generally agrees with Freeport Minerals but believes that the focus should be on the Verde Valley Watershed. He suggests that the parties be given time to review ADWR's map of the Verde River Watershed and submit comments regarding scheduling. He further stated that the adjudication should focus on all federal claims and not on just the wilderness area claims.

The Court states that it will post ADWR's map on the Court's adjudication website. The Court is inclined to proceed by adjudicating rights sub-watershed by sub-watershed as opposed to requesting ADWR to prepare a single report for the entire watershed. Mr. Foy responded that an important issue assuming that approach is the choice of the first watershed.

Ms. Montgomery addresses the Yavapai-Apache Nation's position. She agrees with SPR that it would be helpful to review ADWR's sub-watershed map and submit comments. Ms. Montgomery believes that the subflow zone determination should be decided first. She states that the boundaries of the reservation are intertwined with the community. Ms. Montgomery advocates a parallel path for the adjudication of the reservation water rights because of the unique relationship with the surrounding communities. She states that she expects that the SOC for her client would be amended.

Mr. Barry states that 18-24 months would be necessary to amend the United States' SOC for the Yavapia-Apache Nation. Ms. Montgomery did not have an estimate of the amount of time needed to amend the SOC for the Yavapia-Apache Nation.

Ms. Montgomery states that she does not want the federal claims to be frontloaded. She does not want the Nation to be subject to an HSR with the state claims held in abeyance for adjudication at a later time.

Mr. Sparks addresses adjudication law and states that the adjudication requires an HSR and that the sub-watershed is an appropriate division for an HSR. He believes that the session law referenced by Mr. Hood is a legislative preference, but is not binding on the court or the parties. Mr. Sparks said it would be discriminatory to single out federal and Indian claims. The Court has the authority to set and establish procedures within the basin. He states that there may be a Veterans Administration Hospital in Prescott and

the Indian Health Services may have facilities that drain into the Verde. He also states that the Mazatzals drain into two sub-watersheds of the Verde before joining into the Verde mainstream. There are also enclaves of BLM land in the Verde drainage. He also cautions that consideration should be given to the drainage of the Mogollon Rim in determining the physical boundaries of the HSR. He suggests that an integrated, comprehensive HSR would be the most helpful tool. Mr. Sparks also described the amount of time that the United States requires to collect data to support its claims.

Mr. Hood agrees that there are 15 federal wilderness areas. He recommends that there be a series of deadlines that ensure that claims are filed on an incremental and ongoing basis to maintain progress.

Discussion is held regarding scheduling and the subflow zone report.

The Court reports that it has a meeting scheduled with ADWR on January 29, 2020. The parties are to submit comments, including a proposed schedule by **January 21, 2020**, regarding proposed procedures for the adjudication of the Verde Watershed. The Court will take the parties' comments and have a discussion with ADWR about what is reasonable in terms of timing and sub-watersheds.

IT IS ORDERED setting a status conference on **February 12, 2020 at 3:00 p.m.** to consider the parties' comments, proposed schedules, and the information provided by ADWR. The conference will be held in the Superior Court of Arizona, Central Court Building, Courtroom 301, 201 West Jefferson Street, Phoenix, AZ 85003-2202.

Instructions for telephonic participation:
Dial: 602-506-9695 (local)
1-855-506-9695 (toll free long distance)
Dial Collaboration (conference) Code 357264#

2:40 p.m. Matter concludes.

LATER:

The map of the Verde Watershed has been posted under Case Number W1-106 on the Court's website on the "What's New" page.

All filings required by this minute entry shall be filed under Case No. W1-106.

A copy of this order is mailed to all persons listed on the Court-approved mailing list.