

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/19/2021

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

A Parmar
Deputy

FILED: March 18, 2021

In re: St. David Irrigation District
Contested Case No. W1-11-1675

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

Central Court Building – Courtroom 301

1:30 p.m. This is the time set for a Status Conference before Special Water Master Susan Ward Harris to discuss the process of Issue No. 1 and the status of the resolution of Issue No. 3.

The following attorneys appear telephonically:

- Mark McGinnis and John B. Weldon of behalf of Salt River Project (“SRP”)
- Bradley Pew on behalf of Freeport Minerals
- David Brown and William L. Staudenmaier of behalf of St. David Irrigation District
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Joe Sparks and Laurel Herrmann on behalf of San Carlos Apache Tribe
- John Burnside of behalf of BHP Copper and St. David Irrigation District
- Charles Cahoy on behalf of the City of Phoenix
- Thomas Murphy on behalf of Gila River Indian Community
- William H. Anger on behalf of City of Mesa
- Patrick F. Barry, Rebecca Ross, and JoAnn Kintz on behalf of the U.S. Department of Justice, Indian Resources Section.
- Rhett Billingsley on behalf of American Smelting and Refining Company (“ASARCO”)

- Sue Montgomery of behalf of Yavapai Apache Nation (and observing on behalf of Pascua Yaquai Tribe)

Discussion is held regarding the status of settling Issue No. 3.

Mr. Brown represents that they have not yet obtained a stipulation amongst all of the parties. He anticipates that the parties will be able to respond to Mr. Brown's proposal by March 15th. Mr. Sparks said that the Tribe has been shut down since the last week in February and all business is done remotely. He needs to arrange to appear before the tribal council at either a special meeting or a regular meeting, which is the first Tuesday of the month.

1:37 p.m. Jeremiah Weiner appears on behalf of the Tonto Apache Tribe.

Discussion is held regarding the proposed summary judgment motion involving Ms. Driggs and Issue No. 2. Mr. Brown said that the statement of claimant supporting Ms. Driggs claim is the statement of claimant filed by the St. David Irrigation District.

Mr. Brown outlined a schedule for a motion for summary judgment on Ms. Driggs claim that included time for discovery and further stated that he did not anticipate rebriefing any of the issues decided in the September 12, 2020 minute entry.

Mr. Murphy said that the primary problem is that the issue has been litigated and decided. Facts cannot be relitigated that were necessary to the summary judgment. He proposed in a response that the court could *sua sponte* enter a judgment. Mr. Sparks said that the issue has been fully briefed, argued and decided. He said the only question is whether the matter should be referred to the court. Mr. Barry argues that a procedural question exists because Ms. Driggs now appears as an individual litigant. He needs to know the capacity in which Ms. Driggs is raising these issues. Mr. Barry also pointed out that Ms. Driggs raises a variety of defenses to forfeiture. He also questions whether the other four claimants who have lands that were put before the court by SRP's motion have been given a ticket out of the litigation so that the previous ruling does not apply to them. Mr. Barry also joins with Mr. Murphy's argument that Ms. Driggs is bound by the existing ruling.

Mr. McGinnis stated that Issue No. 2 was a designated issue in this case. He said that Rule 56(a) allows a summary judgment to be filed on a claim or defense or part of a claim or defense. Mr. McGinnis said the SRP's motion was intentionally captioned as a partial motion for summary judgment because all he was moving on was the defense to forfeiture that a pre-1919 right cannot be forfeited. He explained that the purpose of this process with Ms. Driggs is so that when the legal ruling goes up to Judge Brain there will be one water right found to have been forfeited under the ruling.

Mr. Pew agrees with the process outlined by Mr. Brown to move forward and agrees with Mr. McGinnis. Mr. Burnside also agreed with the position as outlined by Mr.

McGinnis. Mr. Burnside said that it is clear on the face of the ruling that there is no finding that any particular right was forfeited.

Mr. Cahoy and Mr. Anger agree with comments of Mr. McGinnis.

Ms. Montgomery said that her client is not taking a position on this matter.

Mr. Brown supports the *sua sponte* approach.

Mr. Murphy does not believe there would be an issue with proceeding *sua sponte*.

Mr. Sparks does not understand what the court would do *sua sponte* and not sure what the facts are with respect to Ms. Driggs.

Further discussion is held. Mr. Sparks states that he needs until the end of May to complete discovery with regards to Ms. Driggs.

Based on the discussion held,

IT IS ORDERED that the stipulation or proposed schedule to resolve Issue No. 3 shall be filed by **March 15, 2021**.

IT IS FURTHER ORDERED that discovery shall be completed by **May 31, 2021**, with respect to Ms. Driggs after which time a Motion for Summary Judgment may be filed.

2:34 p.m. Matter concludes.

LATER:

Following the status conference reported in this minute entry, the parties moved for and were granted an extension of time to continue to work on the resolution of Issue No. 3¹ until April 29, 2021. It is appropriate to set a Scheduling Conference in this case to address discovery, motions and a trial date to resolve Issue No. 3 if it cannot be settled. Also, it is time to develop a plan to resolve any additional common issues that may exist in this case and to determine the merits of the claims for and objections to water rights presented in this case. The parties should be prepared to discuss a plan to resolve the claims and objections presented in this case at the Scheduling Conference. The plan may be either a phased plan or a comprehensive plan.

¹ Three questions were designated as the issues to be resolved in the first phase of this case: Issue No. 1: The correct methodology to determine the amount of water used for irrigation and the quantities used for irrigation. Issue No. 2. Whether water rights with a priority date prior to 1919 are subject to forfeiture. Issue No. 3 The identification of the points of diversion. See Minute Entry filed August 21, 2019.

IT IS ORDERED setting a Scheduling Conference on **May 20, 2021** at 2:00 p.m.

Instructions for telephonic participation:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Collaboration (conference) Code 357264#

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