

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL
ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE
GILA RIVER SYSTEM AND SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case No. W1-11-1675

ORDER DENYING MOTION TO
VACATE DISCOVERY DEADLINE

CONTESTED CASE NAME: *In re St. David Irrigation District*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

NUMBER OF PAGES: 4

DATE OF FILING: June 9, 2021

The San Carlos Apache Tribe moved to vacate the May 31, 2021 discovery deadline set for the adjudication of water rights associated with Terisha Driggs, a member of the St. David Irrigation District. San Carlos Apache Tribe's Motion to Vacate Discovery Deadline and Motion for Expedited Consideration filed May 28, 2021 ("Motion"). It asserts two reasons to support an extension of the discovery deadline. First, the San Carlos Apache Tribe claims that good faith discovery about Ms. Driggs' claims is impossible because the parties failed to produce documents,

it lacks documents in its own records, and the records in the National Archives are not accessible. Motion at 7. Second, it argues that Phase 1 of this case should not proceed as currently scheduled; instead, the parties should begin to separately litigate each of the cases involving the St. David Irrigation District. Consistent with this position, the San Carlos Apache Tribe moves that a new discovery deadline should be set with respect to Ms. Driggs' claim along with other claims to be adjudicated within the St. David Irrigation District.

A. Discovery Deadline

According to the Motion, Arizona Department of Water Resources ("ADWR") investigated the land owned by Ms. Driggs' predecessor-in-interest and reported its findings in Watershed File Report 112-17-DBA-122 ("WFR"). The findings in the WFR relevant to the current proceeding concern filings made by the St. David Irrigation District about irrigation use on the property with a claimed priority date of 1881. The Arizona Department of Water Resources listed 1881 as the "Apparent First Use Date" and determined that no irrigation had occurred on 12.2 acres of the property in the preceding five years. The San Carlos Apache Tribe objected to the WFR, among other reasons, because "[a]ll or part of the PWR has been idle for more than five years and therefore is not entitled to a water right." *See* Objection at 3 (May 12, 1992).

The Salt River Project, joined by the St. David Irrigation District, challenged the objection as a matter of law in a motion for partial summary judgment arguing that pre-1919 water rights cannot be forfeited for non-use. The issue presented by the motion for partial summary judgment is Issue No. 2 in Phase 1 of the case. Based upon a determination that the Arizona Supreme Court has ruled that pre-1919 rights to appropriable water are subject to statutory forfeiture provisions, the motion for partial summary judgment was denied. Minute Entry filed September 10, 2020.

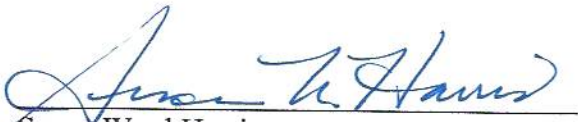
Following the issuance of the Minute Entry, the St. David Irrigation District stated its intention to file a motion for summary judgment or partial summary judgment based on the facts of one of the contested cases consolidated in this case. The proposed motion would require the adjudication, as a matter of fact and law, of those specific water rights identified in the motion that also fit within the parameters of Issue No. 2. The San Carlos Apache Tribe requested to be allowed until the end of May 2021 to conduct discovery before St. David Irrigation District filed its motion. The request was granted. The question posed by the Motion is whether the San Carlos Apache Tribe has shown good cause for the extension of that discovery deadline. Ariz. R. Civ. P. 6(b).

According to the St. David Irrigation District, the San Carlos Apache Tribe has not engaged in any discovery during the discovery period. St. David Irrigation District's Response in Opposition to San Carlos Apache Tribe's Motion to Vacate Discovery Deadline at 3 (June 4, 2021). The San Carlos Apache Tribe contends that discovery is not possible because the parties failed to produce documents. It does not point, however, to any efforts that it undertook to require production of records. The San Carlos Apache Tribe further claims that discovery is not possible due to lack of access to the National Archives, but it does not explain the types of records that the National Archives would maintain that would bear upon the question of whether the rights to water used on the land that St. David Irrigation District puts at issue in its motion had or had not been statutorily forfeited. The San Carlos Apache Tribe further argues that additional discovery could cause other parties in this adjudication to challenge a finding of nonuse. Motion at 5. Given that no other party has requested an extension of the discovery deadline, this argument is simply speculation. Based upon the foregoing, good cause does not exist for the extension of the discovery deadline.

B. Termination of Phase I

The San Carlos Apache Tribe also argues in its Motion for a change to the procedures adopted in this case. Instead, of completing Phase 1 that is designed to resolve issues common to many of the landowners in this consolidated case, it argues that the adjudication of the hundreds of individual potential water rights, claims, and objections should commence. While the time will come when the claims and objections in each contested case must be individually litigated, the San Carlos Apache Tribe has not presented any compelling reasons to abandon Phase 1 without allowing the parties the limited amount of time necessary to complete the pleadings on Issue No. 2. The ruling on the motion filed by St. David Irrigation District will complete consideration of Issue No. 2 in Phase 1 of this case.

IT IS ORDERED that the San Carlos Apache Tribe's Motion for Expedited Consideration is granted and the San Carlos Apache Tribe's Motion to Vacate Discovery Deadline is denied.


Susan Ward Harris
Special Master

On June 9, 2021, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court-approved mailing list for this contested case.