

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/18/2020

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN HARRIS

T. DeRaddo

Deputy

In re Magma Copper – Mining
Contested Case No. W1-11-2428

In re: Magma Copper – Irrigation
Contested Case No. W1-11-2503

FILED: 1/5/2021

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 re San Pedro River
Watershed Hydrographic Survey Report

MINUTE ENTRY

Courtroom: CCB 301

1:30 p.m. This is the time set for a Status Conference re regarding the Arizona Department of Water Resources' Amended Watershed File Report before Special Master Susan Ward Harris.

All attorneys and parties appear virtually/telephonically via the GoToMeeting application. Appearances are as follows:

- Mark McGinnis and John Weldon on behalf of Salt River Project
- Meghan Grabel and Rob Spear on behalf of the Arizona Water Company
- John Burnside on behalf of BHP Copper fka Magma Copper Co.
- Kimberly Parks, Michael Hillstrom, Kelly Hermanson and Sara Lane on behalf of ADWR
- Rhett Billingsley on behalf of ASARCO LLC
- Charles Cahoy on behalf of the City of Phoenix
- Joseph Sparks and Laurel Herrmann on behalf of the San Carlos Apache Tribe
- Lucas Christian on behalf of the Tonto Apache Tribe
- Jay Tomkus on behalf of the Yavapai Apache Nation and the Pasqua Yaqui Tribe

A record of the proceedings is made digitally in lieu of a court reporter.

A discussion is held regarding potential due process issues related to the provision of additional notice of the amended watershed file reports (WFRs). Mr. Burnside takes the position that the differences between the old WFRs and the new WFRs are not material in such a way that another claimant who did not object to the old WFRs might believe they have been deprived of an opportunity to object to the new WFRs if notice is not given throughout the adjudication. With respect to the quantity of use and priority dates, the quantities in the new WFRs are lower than in the old WFR. The oldest priority dates are the same between the WFRs. He also points out that there are multiple other avenues available to the parties to obtain information about the case.

Mr. McGinnis states that it is not necessary to give notice to every claimant in the adjudication. He makes a distinction between the situation where the issue is whether an amended watershed file report shall be prepared and the situation involving the filing of objections to an amended watershed file report. Mr. McGinnis recommends that once a WFR is amended, the notice of the amended WFR and an objection deadline should be given to all parties on the W-1, W-2, W-3, W-4 list. Mr. McGinnis suggested that a separate notice should be given by the court setting a 60-day deadline for filing objections.

Mr. Sparks requested that the objection deadline be longer than 60 days and agrees that the court should issue an additional notice to the parties on the W-1, W-2, W-3, W-4 list setting a deadline for filing objections.

Mr. Burnside states that a 60-day objection period may be a little short and suggested that a 90-day deadline would be more appropriate.

Mr. Burnside stated that the two cases should be consolidated and then stayed until ADWR has completed and applied the depletion test. Approximately one-half of the wells involved in the cases are outside the lateral boundaries of the subflow zone. He listed three different uses in the two cases: an industrial production use, a wildlife use that relies on six artesian wells, and an irrigation use. There are no wells currently being used for irrigation. Mr. Burnside argues that all industrial production wells are pumping percolating groundwater from a deeper confined aquifer that is below the alluvial aquifer that includes the subflow zone. He believes that a properly constructed depletion test will show that the wells located outside the subflow zone are not depleting the subflow zone and until there is a depletion test from ADWR that has been approved and applied, BHP Copper intends to rely on the presumption that the wells are pumping percolating groundwater. Mr. Burnside also stated that there is no cone of depression test from the jurisdictional phase so no basis exists for including those wells located outside the

subflow zone. Mr. Burnside addressed the irrigation wells stating that the most important issue with respect to those wells is forfeiture or abandonment and it does not make sense to proceed until that issue is resolved in the *St. David* case. He concludes that a stay should be entered until the depletion test is completed. Mr. Burnside stated that the case should not be addressed piecemeal; instead, all three components should be decided in a single, consolidated case.

Discussion is held regarding pre-1919 rights.

Mr. McGinnis states that he generally agrees with Mr. Burnside regarding procedural issues. He suggests setting a status conference after the objection period is over to determine whether to consolidate and stay the cases.

Mr. Sparks addresses the Court and says that he does not agree with a stay awaiting a depletion analysis by ADWR. He argues that the cone of depression test on the wells outside the subflow zone is more than adequate to deal with the presumption relating to the wells and the river. He also raised a question about the location of the wells outside the subflow zone as to whether they are in mining shafts that are being dewatered or have been used in the past for dewatering.

Discussion is held regarding wells in mineshafts.

Mr. Hillstrom states that ADWR has wells nos.13 and 14 listed as located in the shafts are inactive. Mr. Burnside states that generally there are no pumps in any mine shaft that are currently withdrawing water.

Rhett Billingsley supports the request for a stay of the cases.

IT IS ORDERED the Court shall send out notice to the parties that the deadline to file objections or to amend existing objections to the Amended WFR is **April 2, 2021**.

IT IS FURTHER ORDERED setting a telephonic Status Conference on **May 7, 2021 at 1:30 p.m.** The purpose of the telephonic Status Conference will be to address Mr. Burnside's request to stay both case and to consolidate the cases.

2:14 p.m. Matter concludes.

NOTE: All court proceedings are recorded digitally and not by a court reporter. The parties or counsel may request a CD of the proceedings. For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.

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