

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/17/2022

CLERK OF THE COURT

SPECIAL WATER MASTER
SUSAN WARD HARRIS

S. Ortega
Deputy Clerk

FILED: 07/18/2022

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

In Re: San Pedro Subflow Technical Report,
Watershed Contested Case No. W1-103

MINUTE ENTRY

Courtroom: ECB 613

1:30 p.m. This is the time set for a Scheduling Conference.

The following attorneys and parties appear in person:

John D. Burnside for Arizona Public Service (“APS”) and BHP Copper (“BHP”)
Sean Hood for Freeport Minerals Corporation (“Freeport Minerals”)
Kome Akpolo and Kimberly R. Parks for Arizona Department of Water Resources
 (“ADWR”)

Carrie J. Brennan for Arizona State Land Department
Bradley Pew for ASARCO, LLC
David A. Brown for Gila Valley Irrigation District, Franklin Irrigation District, St.
David Irrigation District, and City of Cottonwood

Alexandra Arboleda and Luke Erickson for City of Flagstaff and observing for the
Town of Prescott Valley and City of Tombstone

Meghan Grabel and Jeff Inwood for Arizona Water Company
Mark A. McGinnis, Stan Lotz and John Ford for Salt River Project
Emmi Blades and Stephen Reich for United States Department of Justice, Indian
Resources Section

Joe P. Sparks for the San Carlos Apache Tribe
Bill Anger for Cities of Avondale, Chandler, Glendale, Mesa, Scottsdale and
Tempe

Jenny J. Winkler for City of Chandler
Charles Cahoy for the City of Phoenix
Nick Eicher for City of Prescott

Payslie Bowman for Hopi Tribe
Peter Mack, Consultant to Gila River Indian Community

The following attorneys and persons appear virtually and/or telephonically:

Dr. Amy Hudson on behalf of Freeport Minerals
Laurel A. Herrmann for San Carlos Apache Tribe
Alexander Ritchie, Attorney General for San Carlos Apache Tribe
Dave Gehlert for U.S. Department of Justice
Michael J. Pearce observing for Buckeye Irrigation Company and Buckeye Water Conservation and Drainage District
Sara Ransom for City of Sierra Vista and Pueblo del Sol Water Company
Mark Nicholls of Haley and Aldrich, Consultant for Pueblo del Sol Water Company
Thomas L. Murphy for Gila River Indian Community

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

This matter comes before the Court on Freeport, APS and BHP's Request for Scheduling Conference Concerning Completion of the Subflow Depletion Test, filed March 11, 2022.

Kimberly Parks updates the Court with a status report. The matter is currently in the development phase of the model. The hydrologists need to continue to refine the model grid and review the work that has already been done. The next steps are developing the vertical boundaries of the model consistent with the Court's order. ADWR has gone through about a third of the well logs towards that effort and are still working on that. The next step would be to complete the transient model calibration and then to issue a report or demonstration project showing the preliminary analysis and some example results. As far as timing, ADWR thinks it can finish the model in just over a year. As far as meetings with the parties go, ADWR is hoping the first meeting can be held in January 2023 to present the work that has been done up to that point, which, hopefully, will include the vertical delineation. Another meeting can be scheduled in July or August 2023 for ADWR to present the model calibration. Depending on the status of the matter at that point, ADWR expects to issue the report in December 2023 with preliminary analysis and example results. Ms. Parks proposed that the parties shall have thirty days to submit comments and another sixty days after that for ADWR to respond to any of the comments followed up by discovery and an evidentiary hearing if necessary.

Sean Hood states that he has no concerns regarding the schedule as articulated by Ms. Parks.

Mark McGinnis states that one year is reasonable given the delays they have experienced and is encouraged by the fact that this matter is moving along. Mr.

McGinnis is concerned about the thirty day time frame to respond to the initial report in that it might not be enough time.

John Burnside agrees with the comments made by Mr. Hood and Mr. McGinnis and shares the minor concern about the thirty-day time frame to respond to the initial report and thinks that sixty days would be reasonable.

Carrie Brennan has no objections to the timeline by Ms. Parks.

Bradley Pew agrees with the comments made by Mr. Hood and Mr. McGinnis.

David Brown agrees with the comments by Mr. Hood and Mr. McGinnis.

Alexandra Arboleda concurs with the comments made.

Emmi Blade agrees with the comments made.

Joe Sparks agrees and asks the Court if Ms. Parks is able to comment on whether or not ADWR has adequate funding to proceed with this project and schedule.

Ms. Parks states that she is not involved in funding decisions but does believe that the issue is the turnover and trying to find qualified hydrologists to replace the others they have lost.

Charles Cahoy has nothing to add.

Sara Ransom has nothing to add.

Thomas Murphy has nothing to add.

The Court asks counsel if they have any thoughts about dealing with the pending cases.

Mr. McGinnis believes that some portions of some cases should be able to move forward once the cone of depression test is applied. SRP's position is that once a well is determined to be within the Court's jurisdiction, the Court can then move forward with litigating the water rights but cannot finish the adjudication until the depletion test is done. The depletion test is needed prior to the entry of the decree.

Ms. Parks believes they can use AquiferWin for cone of depression testing which can be done within a shorter amount of time, but if they do use the MODFLOW model, then it will take longer.

Mr. Sparks believes that once the cone of depression test is done and they know for certain that those wells are within the jurisdiction of the Court, then those cases can

proceed. The cone of depression test is the only procedure needed. Thereafter, the well owner has the obligation to demonstrate that it is depleting the subflow zone.

Mr. Hood recalls that the MODFLOW is the essence of the Court's order and agrees with Mr. McGinnis' comments regarding ideas about moving forward with pending cases. He said that when we are within a year off from meaningful progress on the depletion test, trying to pick off little pieces of cases will only subject litigants to excess costs.

Mr. Burnside agrees with Mr. Hood.

Ms. Brennen agrees.

Mr. Pew agrees.

Mr. Brown agrees with Mr. Hood and Mr. Burnside and does not think within a year, any meaningful progress can be made.

Ms. Arboleda agrees with Mr. Hood's comments. It would be more efficient to wait to proceed on cases because only looking at a year time frame.

Ms. Blade has nothing to add and maintains the United States' positions in its pleadings.

Mr. Cahoy has nothing to add.

Mr. Murphy notes that the Community concurs with the remarks made by Mr. Sparks. He agrees that if the Court does decide to utilize MODFLOW for the cone depression testing and if that model is developed, the Court can move forward on adjudicating a number of cases. He assumes that the model for the depletion test will be the same as the cone of depression test. If it is not, he would like to hear from ADWR about the amount of time to finalize the MODFLOW model for the cone of depression test.

Ms. Ransom has nothing to add.

The Court is hopeful that after this hearing, counsel and the parties can further discuss some ideas for moving the pending cases forward.

1:56 p.m. Matter concludes.

IT IS ORDERED that ADWR will schedule a meeting, noticed to all persons listed on the Court-approved mailing list for this case, to discuss the status of its Technical Report no later than **January 31, 2023**.

IT IS FURTHER ORDERED that ADWR will schedule a second meeting, noticed to all persons listed on the Court-approved mailing list for this case, to discuss the status of its Technical Report no later than **August 31, 2023**.

IT IS FURTHER ORDERED that ADWR shall issue its Technical Report by **December 22, 2023**. The notice of the Technical Report shall state that the deadline for filing objections to the Technical Report shall be **February 20, 2024**.

IT IS FURTHER ORDERED setting a Status Conference on **March 7, 2024 at 1:30 p.m.** to address proceedings necessary to resolve any objections filed to the Technical Report.

The Status Conference shall be held using Court Connect. Instructions for Court Connect are attached to this Order. If you receive this Order by email, click on the red box “Join Court Connect Hearing” on the attached instructions to make an appearance. If you do not receive this Order by email, log into the Court Connect program on the internet by typing <https://tinyurl.com/specialwatermaster>. If you do not have access to the internet, you may attend telephonically using the telephone number and access code included in the instructions for Court Connect. The Status Conference may also be attended telephonically using the following instructions:

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.



Court Connect Hearing Notice for In re San Pedro Subflow Technical Report

This hearing will be conducted through the new Court Connect program offered by the Superior Court of Arizona in Maricopa County. This new and innovative program allows Court participants to appear online, rather than in a physical courtroom. Hearings are preferably conducted by videoconference but can also be conducted by phone. Lawyers (and self-representing litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf.

All participants must use the JOIN COURT CONNECT HEARING button or the dial in information below to participate.

Participants: Please follow the steps below to participate in the remote proceeding.

1. Click the JOIN COURT CONNECT HEARING button below.
2. Enter your full name and role in name field.
3. Wait for the facilitator to admit you to the proceeding.

Remember to keep this email handy so you can use it to participate in the following proceeding.

Case Name: In re San Pedro Subflow Technical Report, Contested Case No. W1-103

Start Date/Time: March 7, 2024 at 1:30 p.m.

JOIN COURT CONNECT HEARING

Dial-in Information: +1 917-781-4590

Private Dial-in Information: for privacy purposes, you can block your phone number by dialing *67 +1 917-781-4590

Dial-in Access Code: 688 970 203#

Tiny URL: <https://tinyurl.com/specialwatermaster>

To ensure an optimal experience, please review the brief Court Connect training prior to the hearing: [Here](#)

