

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/23/2021

CLERK OF THE COURT
FORM V000

SPECIAL MASTER SUSAN WARD HARRIS

S. Motzer
Deputy Clerk

FILED: 02/24/2021

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

**MINUTE ENTRY
TRIAL DAY 2**

Courtroom: CCB - 301

9:00 a.m. This is the time set for Trial to the Court.

The following attorneys and parties appear via GoToMeeting:

- Kevin Crestin for Arizona State Land Department
- John D. Burnside for Arizona Public Service and BHP Copper
- Mark A. McGinnis for Salt River Project
- Sean Hood and Bradley Pew for Freeport Minerals
- Charles Cahoy for the City of Phoenix
- Kimberly R. Parks for Arizona Department of Water Resources
- Joe P. Sparks and Laurel Hermann for the San Carlos Apache Tribe
- Thomas Murphy for Gila Indian River Community
- Jenny J. Winkler for City of Chandler
- Sara Ransom for Pueblo del Sol Water and City of Sierra Vista
- Bill Anger for Cities of Avondale, Chandler, Glendale, Mesa and Scottsdale
- Yosef Negosi, Emmi Blades, Marisa Hazell, Hillary Hoffman, and Tyler Eastman for United States Bureau of Indian Affairs and Sonia Overholser for the United States Department of Interior
- Alexandra Arboleda for City of Flagstaff
- Rhett Billingsly for ASARCO
- Tony Gioia, former Mayor of Camp Verde, observing for City Camp Verde.

Court reporter, Robbin Bobbie, is present and a record of these proceedings is made digitally.

Discussion is held.

Peter Mock resumes the stand and continues to testify.

Peter Mock is excused.

Jon Ford is sworn and testifies.

SRP exhibit 3, 1, 2, 8, and 6 are received in evidence.

Mark Cross is sworn.

9:49 a.m. The Court stands at recess.

10:01 a.m. The Court reconvenes with the parties and counsel present.

Court reporter, Robbin Bobbie, is present and a record of these proceedings is made digitally.

Mark Cross, previously sworn, testifies.

APS/BHP exhibits 4, 1, 2, and 3 are received in evidence.

Trial matters are discussed.

11:33 a.m. The Court stands at recess.

1:30 p.m. The Court reconvenes with the parties and counsel present.

Court reporter, Scott Conaim, is present and a record of these proceedings is made digitally.

Mark Cross continues to testify.

Mark Cross is excused.

Briefing is discussed.

Ms. Parks questions whether the Court is expecting a brief from ADWR because ADWR did not take a position.

Based on the discussion held,

IT IS ORDERED that briefing shall be filed **no later than June 30, 2021.**

LET THE RECORD REFLECT that ADWR is not required to file any briefing.

1:58 p.m. Matter concludes.

LATER:

The Arizona Department of Water Resources (“ADWR”) is in the process of developing a subflow depletion test to quantify the impact of the pumping by a well located outside the subflow zone on subflow. In December 2018, ADWR issued an Initial Subflow Depletion Test Report (“Report”). This process is consistent with the Court’s direction that ADWR shall develop a highly reliable test to evaluate a well’s drawdown of subflow. *See In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 198 Ariz. 330, 343, 9 P.3d 1069, 1082 (2000).

According to the Report, ADWR is working with MODFLOW and Zonebudget to develop an appropriate model that will serve as the test. MODFLOW is a computer program that uses a set of mathematical formulas to simulate groundwater flow within and through an aquifer as conceptualized by the modeler. The program relies upon a grid composed of cells to allow numerical values to be input that define the physical area represented by the cell and the hydrological communication between the cells within the grid. It also represents a simplified version of the vertical aspect of the aquifer with a series of horizontal layers that incorporate the hydrological properties relevant to groundwater flow. MODFLOW also permits the introduction of mathematical formulas to represent the impact of pumping in the aquifer on the groundwater and surface water flow.

The specific issue for which a factual record was created in this brief evidentiary hearing concerns the determination of the appropriate horizontal layer of the MODFLOW model that should be designated as the lower boundary of the subflow zone for purposes of testing whether wells located **outside** the lateral boundaries of the subflow zone are depleting the subflow zone. Focusing on substantive factual issues that were the subject of the hearing, there is no dispute among the parties that the layers or portions of layers in the model representing the floodplain alluvium should be included in the subflow zone. The dispute concerns whether additional layers of the aquifer, as represented by a properly configured MODFLOW model, should be included in the subflow zone for purposes of testing wells located outside the lateral boundaries of the subflow zone.

It is recognized that there are parties that dispute the need for the subflow depletion test, challenge the timing for the development of the test, and question whether the test serves any purpose. No party will be deemed to have waived those arguments that were included in papers filed in response to the questions posed in the Minute Entry filed August 5, 2019, the Disclosure Statements or in the joint pre-trial statement unless an express and explicit waiver or withdrawal of those arguments is included in their post-

hearing briefing. Parties also have the option of incorporating those arguments by reference if they believe such an action is necessary to preserve their positions.

Parties who elect to file post-hearing briefing are encouraged to focus on arguing the facts and legal reasons that support their positions as to the appropriate horizontal layer(s) of the MODFLOW model that define the subflow zone or, as posed in the minute entry, the legal definition of the vertical extent of the subflow zone with respect to wells located outside the lateral boundaries of the subflow zone.

Post-hearing briefing shall not exceed 17 pages.

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