

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

September 6, 2023

CLERK OF THE COURT

A. Parmar

Deputy

SPECIAL WATER MASTER
SHERRI ZENDRI

In Re: Subflow Technical Report
Verde River Watershed, Case No. W1-106

FILED: September 7, 2023

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)

MINUTE ENTRY

Central Court Building – Courtroom 301

9:00 a.m. This is the time set for an Oral Argument regarding SRP, ASLD and Freeport Minerals' *Motion for Summary Judgment Re: Objection to Subflow Delineation Report for Verde Mainstem and Sycamore Canyon Subwatershed* filed June 15, 2023 ("Motion for Summary Judgment") before Special Water Master Sherri Zendri.

The following attorneys/parties appear via Court Connect:

- Mike Foy, Mark McGinnis and Katrina Wilkinson on behalf of Salt River Project ("SRP")
- Sean Hood on behalf of Freeport Minerals Corporation
- Carrie Brennan and Kevin Crestin on behalf of Arizona State Land Department ("ASLD")
- Kimberly Parks and Karen Nielsen on behalf of Arizona Department of Water Resources ("ADWR")
- Sue Montgomery and Robyn Interpreter on behalf of the Yavapai Apache Nation (and observing on behalf of the Pascua Yaqui Tribe)
- Charles Cahoy on behalf of the City of Phoenix
- Alexandra Arboleda on behalf of the City of Flagstaff and Town of Prescott Valley
- David Brown and Jenny Winkler on behalf of the City of Cottonwood
- Bradley Pew observing on behalf of American Smelting and Refining Company ("ASARCO")
- Meghan Gabel and Elias Ancharski on behalf of the Arizona Water Company
- Emmi Blades observing on behalf of the United States Department of Justice

- Michael Rolland and William Anger on behalf of the Cities of Tempe, Mesa, Avondale, Glendale and Scottsdale
- Katya Lancero observing behalf of the Navajo Nation

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

LET THE RECORD REFLECT that all participants appear virtually through Court Connect.

Counsel for SRP, Mr. Foy, addresses the Court regarding the Motion for Summary Judgment.

Counsel for Freeport Minerals, Mr. Hood, addresses the Court regarding the Motion for Summary Judgement.

Counsel for ASLD, Ms. Brennan, addresses the Court regarding the Motion for Summary Judgment.

The Court addresses the parties regarding ADWR. While the Court understands that ADWR has a different role than the other parties, the Court does not find the comments provided by ADWR to be inappropriate. Further, the Court reminds the parties that it does not meet with ADWR privately, notice is always given. However, the Court takes note of the concern and will continue to ensure that their participation in this adjudication is appropriate.

Counsel for ADWR, Ms. Parks, addresses the Court regarding previous orders determining the scope of ADWR's role and its comments to the Motion for Summary Judgment.

The Court inquires if the parties believe ADWR should delineate a subflow zone through the center of an impoundment of surface water.

Counsel for SRP, Mr. Foy, responds yes based on the predevelopment conditions. He states the water is appropriated, not appropriable, and does not need a subflow zone to protect it as there are other remedies.

Mr. Hood agrees with Mr. Foy's response and does not believe the function of the subflow zone to be to protect water but to map the stable geologic structure.

Counsel for ASLD, Ms. Brennan, agrees with Mr. Foy's and Mr. Hood's responses and does not believe another party can impound another into a subflow zone.

Discussion is held regarding the subflow zone and appropriated water vs. appropriable water.

Ms. Montgomery addresses the Court regarding the Motion for Summary Judgment and the criteria of Gila IV. She concurs with Mr. Hood's and Mr. Foy's positions.

Ms. Parks addresses the Court regarding the delineation of the subflow zone and the characterization of the water.

IT IS ORDERED taking the Motion for Summary Judgment under advisement.

10:25 a.m. Matter concludes.

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