

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/03/2021

SPECIAL WATER MASTER SUSAN WARD HARRIS

In re: The General Adjudication of All Rights To Use Water in the Gila River System and Source
Contested Case No. W1-11-232
Contested Case Name In Re: San Pedro Riparian National Conservation Area

In Re: Status Conference

CLERK OF THE COURT

L. Brown

Deputy

FILED: 12/20/2021

MINUTE ENTRY

Central Court Building- Courtroom 301

2:00 p.m. This is the time set for a Status Conference In Re: San Pedro Riparian National Conservation Area before Special Master Susan Ward Harris.

The following attorneys and parties appear via Court Connect/ Microsoft Teams and via telephone:

- Mike Foy on behalf of Salt River Project (“SRP”)
- Kimberly Parks on behalf of Arizona Department of Water Resources (“ADWR”)
- Richard Palmer Jr. and Jeremiah Weiner on behalf of the Tonto Apache Tribe
- Joseph Sparks and Laurel Herrmann on behalf of San Carlos Apache Tribe
- Sean Hood on behalf of Freeport Minerals
- Charles Cahoy on behalf of the City of Phoenix
- Bradley Pew on behalf of ASARCO, LLC
- David Brown on behalf of Echoing Hope Ranch and Casa de la Orilla, LLC
- Dallin Duncan, Leslie Sansone and Scott Pralinsky
- Sue Montgomery on behalf of the Yavapai Apache Nation (observing on behalf of the Pascua Yaqui Tribe)
- Thomas Murphy on behalf of Gila River Indian Community

- John Burnside on behalf of BHP Copper
- Lee Leininger on behalf of the United States Department of Justice
- Bill Anger on behalf of the City of Mesa
- Kris Carlson on behalf of Cochise County
- Sarah Ransom on behalf City of Sierra Vista, Pueblo del Sol, Rebecca Davis and Susan Kolbe and the Susan R. Kolbe Living Trust
- Susan Kolbe, Victoria Yarbrough and Rebecca Davis
- Anne Carl Anderson on behalf of Alvin J. and Anne Carl Anderson Revocable Living Trust
- Robert Anderson on behalf of Liberty Bella Vista Ltd. Partnership

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

WFR 111-23-AAA-001

Mr. Leininger states that we can dispense with these Statements of Claimant in WFR 111-23-AAA-001: 39-0371, 39-4297, 39-12705, 39-12706, 39-12707, 39-12708, and 39-12710.

IT IS ORDERED that Statements of Claimant 39-0371, 39-4297, 39-12705, 39-12706, 39-12707, 39-12708 and 39-12710 are all dismissed.

Mr. Leininger states there are some edits needed to the remaining proposed abstracts and suggests submitted draft abstract to ADWR and the Court for review.

The Court asks Mr. Leininger whether it is his proposal that the United States provides comments on the draft abstracts and then the Court will provide the United States' comments to ADWR for review?

Mr. Leininger answers yes and states that there are a few of the proposed abstracts that need some updating of the record keeping and the United States will submit some additional documentation to ADWR.

Mr. Sparks states they do not have an objection to the United States' approach. In the descriptions of how some of the United States parcels are held it refers to BLM and rarely to the United States. It would be a better record if they all have the same title.

Mr. Leininger states in the proposed abstract the United States is the owner of the water rights and that is correct as a water right held by the United States. The claimant should be corrected to show that it is the United States on behalf of the particular agency.

Mr. Leininger states he will file the additional documentation and edits within a month. The documents themselves for the most part are transfer documents and we are looking at the right of ways for the Union Pacific and Southern Pacific that has land adjacent to the BLM land. I believe our files are fairly complete.

Mr. Leininger states there are three more WFRs involved and fifteen more claims that we are not attending to pursue.

WFR 111-23-DDA-004

Mr. Leininger states that he will discuss WFR 111-23-DDA-004. The United States does not intend to pursue Statements of Claimant 39-0964, 39-0965, 39-0966, 39-5370, 39-5371, 39-11937, 39-11938 and 39-11942.

IT IS ORDERED Statements of Claimant 39-0964, 39-0965, 39-0966, 39-5370, 39-5371, 39-11937, 39-11938 and 39-11942 are dismissed.

IT IS FURTHER ORDERED that Mr. Leininger will file edits and documents within the month for the remaining proposed abstracts for the watershed file report.

WFR 111-24-CBB-005

Mr. Leininger states WFR 111-24-CBB-005 does not have a Statements of Claimant assigned to it from the HSR. This was a source that ADWR identified in Section 16 Township 23 South and Range 22 East. Our records are not clear if there is a water source there but that can also be dismissed.

Mr. Brown addresses the Court. He states he is appearing on behalf of Echoing Hope Ranch and Casa de la Orilla, LLC, who are the landowners, and they do have a water source and water rights and have a claim for those water rights. This case does not need to be stuck in the -232 case and needs to be handled separately because it is private land and has its own water rights and water source. Mr. Brown states if this matter is set separately then counsel will advise the Court once documents are received from National Archives. Mr. Brown states as far as he knows they are the only landowners on this WFR.

WFR 111-24-CCB-011

Mr. Leininger discusses WFR 111-24-CCB-011 and requests dismissal of Statements of Claimant 39-0964, 39-5373, and 39-11936.

IT IS FURTHER ORDERED that Statements of Claimant 39-5373, and 39-11936 are dismissed.

Mr. Leininger states that WFR 111-24-CCB-011 has some duplicate Statements of Claimant and they will be dismissing Statements of Claimant, 39-0964, 39-05373 and 39-11936.

IT IS FURTHER ORDERED that Statements of Claimant 39-05373 and 39-11936 will be dismissed.

The Court addresses Mr. Leininger and states ADWR associated Statement of Claimant 39-0977 with a well and a discontinued irrigation use and requested what the United States plans to claim.

Mr. Leininger states this well, well registration no. 55-603541, is also referred to as Palominas Well number 15. This was part of the combined well claim in the Federal Reserve claim and

subsequently that claim and the associated irrigation wells were amended for purposes for the Federal Reserved water right, and that is why we are not pursuing that claim here as a state law claim. These irrigation wells, that had been originally drilled by Tenneco Corporation for irrigation purposes, are not currently being used for irrigation purposes. Under the Federal Reserved basis they are being claimed for purposes of providing water in emergency situations to maintain flow in the San Pedro River. It is really federal law basis for that particular claim and we have had that issue presented at trial and are waiting for a determination.

The Court addresses Mr. Leininger and states under this WFR 111-24-CCB-011 is there any action that needs to be taken in this case to determine a state water law right?

Mr. Leininger states not for Statement of Claimant 39-0977. There are three other Statements of Claimant associated with this WFR. Two require further investigative work. We absolutely wish to pursue Statement of Claimant 39-13610 and will be submitting a draft abstract.

Mr. Leininger states that one requiring additional investigation is Statement of Claimant 39-12713.

Mr. Leininger discusses the WFRs included in the consolidated case that included land owned by the United States within the boundaries of the SPRNCA. All the watershed file reports that were listed as in SPRNCA include land owned by the United States. There are certain parcels within a WFR that may be privately owned. The claims within that WFR are either identified as located on BLM land or the private parcel. He proposes submitting transfer and fee title documents as part of a report to explain the land ownership in each of the WFRs that are in the SPRNCA boundaries.

The Court asks Mr. Leininger if there are additional cases that will need to be consolidated with this SPRNCA case.

Mr. Leininger states that there are a few.

The Court requests Mr. Leininger to submit his report.

Mr. Leininger states he wanted the Court to know the Statements of Claimant that they are not pursuing so that those can be taken off the table and the report will include a description of the remaining claims.

Mr. Leininger states there are no lands located within SPRNCA owned by the United States that have been sold, exchanged or transferred out of federal ownership.

Mr. Sparks suggests it may be a better part of caution to await the ruling by the trial court on the Federal Reserved claims for water on those wells before a disposition is made of the state right claim for that water that supports the flows for SPRNCA.

Mr. Leininger states that Item C from the Order is to identify any Statements of Claimant listed in the sixteen WFRs that have not been assigned to the United States for which the United States intends to obtain an assignment. There are a number of these that have not been assigned to the United States and the United States intends to obtain an assignment. Congress created the SPRNCA with the instructions that the lands within the SPRNCA be reserved, withdrawn and set aside, and lands that were in private or State ownership be acquired for purposes of the National Conservation area. There are a few of these in-holdings which remain and I believe it is BLM's intention to attempt to acquire those and have those them transferred to federal ownership. On the WFRs it breaks down into particular Statements of Claimant that I will include in the report. I have a number of them. There are a number of private entities in the Court's order that appear to have land that is still in private ownership within the boundaries of the SPRNCA. We have suggested corrections based upon the transfer documents, which I feel we can explain better in the report.

The Court asks Mr. Leininger whether there are any rights the United States intends to acquire in SPRNCA that are not *de minimis* rights, stock pond, stock watering and wildlife watering rights.

Mr. Leininger states there are three that we have identified. WFR 111-20-032 and Statement of Claimant 39-12691 is for a well at Fairbank called the Fairbank No. 2 Well. This is a recreational area. There is a camp-post and other uses. The claim is for 5-acre feet to support domestic and wildlife use. I have asked BLM to investigate that further as to whether the use may be *de minimis*. There is WFR 111-24-CBB-003 and two Statements of Claimant, 39-03796 and 39-03799, identified as the McDowell Craig Farm Well and irrigation well. These wells appear to be located on BLM property but they require further investigation to determine exactly what the use for domestic and/or irrigation purposes are, and the irrigation use may be beyond *de minimis*.

Ms. Ransom states it could be that the property that Mr. Leininger is discussing is owned by my client, or that the property is owned by Echoing Hope Ranch or there is also a BLM parcel in the vicinity. I am happy to speak with Mr. Leininger in more details about those matters.

Mr. Brown states there is some confusion about which well is the right well. The 55 numbers may be assigned improperly and are mixed up. My client is obtaining GPS locations for all the wells in that area so we can get together and ascertain which wells are on which properties and what their uses are.

Ms. Ransom agrees with Mr. Brown's assessment. Mr. Leininger will talk with Ms. Ransom and Mr. Brown.

Mr. Leininger states WFR 112-17-DB-096 and Statement of Claimant 39-11037 for the Donlevy wells may exceed 4-acre feet of water. We understand that these particular wells are preserving a wetland within the SPRNCA and this is one we need to investigate and be certain that these are greater than *de minimis* use. There is one last one that we are not certain of because perhaps the well site was misidentified in WFR 111-24-CBB-005, the Casa de la Orilla, LLC parcel. The parcel is private land identified as tax parcel 104-34-002B, but the WFR has identified the well site as number 24, which is the Whitehouse Well and that well is not located at site 24. The WFR may have misidentified the section location. The Whitehouse well is in Section 15 not Section 16 which we understand to be the private land.

Mr. Leininger states he thinks the report will shed some light on the first question regarding the lands within the boundaries of the United States and the discrepancy between land ownership described in the HSR and what has happened subsequent to the preparation of the HSR.

The Court asks Mr. Leininger is the United States pursuing any in-stream flow rights under state law in SPRNCA.

Mr. Leininger states we have a certificated water right for in-stream flow along the San Pedro in the SPRNCA. I don't believe that has yet been identified as a contested case.

Mr. Leininger states there is a WFR for the instream flow, but the WFR number has not been identified.

Mr. Leininger states he will identify the number of the certificated water right and put it in the report.

The Court asks Mr. Leininger are there any other claims for in-stream flow that the government is making.

Mr. Leininger states not beyond the certificate of water right.

The Court asks if there are any other organization steps to be taken for the adjudication of the United States' claims for water rights in SPRNCA.

Mr. Leininger states certain of the claims in the WFR do not have an associated SOC. ADWR did correctly identify some sources that had not been claimed previously, at least at the time of the HSR. We will be reviewing for purposes of filing the SOC for those. They are all *de minimis* claims.

The Court advises Mr. Leininger to include a section in the report about the claims that do not have an associated SOC in the WFRs so that once the Court has the report it has the United States' comprehensive statement about what needs to be done to deal with state water right claims.

IT IS FURTHER ORDERED the report from the United States shall be completed by **January 20, 2022.**

2:54 p.m. Matter concludes.

LATER: Copies of the orders in this case were sent to William Glenn at the last known address in the public records maintain by Arizona Department of Water Resources: P. O. Box 995, Douglas Az 85607. The orders have been returned. The order issued November 16, 2021 was marked as "Vacant Unable to Forward."

IT IS ORDERED that William Glenn shall be removed from the court approved mailing list.

A copy of this order is mailed to all parties on the Court-approved mailing list for this contested case.

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.