

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE  
THE HONORABLE MICHAEL C. NELSON, PRESIDING JUDGE

THE HONORABLE EDDWARD  
P. BALLINGER, JR., Visiting Judge

SUE HALL, Clerk

COURT REPORTER: Heather Armstrong

By: Barbara J. Silversmith, Deputy

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEM AND SOURCE	Case No. CV-6417 DATE: June 04, 2002 TIME: 9:35 A. M. MINUTE ENTRY: Status Conference
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DESCRIPTIVE SUMMARY	Status Conference held in the Apache County Superior Courtroom, St. Johns, Arizona.
NUMBER OF PAGES	9
DATE OF FILING	August 23, 2002

MINUTE ENTRY

This is the date and time set for a Status Conference in Civil No. 6417.

The Court introduces the court personnel and welcomes those in attendance for the Status Conference.

APPEARANCES

Mr. David Brown, Mr. Douglas E. Brown and Michael Brown, representing various clients; Mr. Paul Watson, representing Town of Pinetop-Lakeside; Mr. Larry Whipple, Mr. Fred R. Hansen, Mr. Ed Pauling, and Mr. Chester Adams, representing Show Low-Pinetop Woodland Irrigation Company; Mr. Gene Kelly, Mr. Rob Emmett, and Mr. Ed Muder, representing City of Show Low; Mr. Kerry Ballard and Mr. Joe Papa, representing Town of Snowflake; Mr. Stephen Sturgell, representing Town of Taylor; Mr. Jim Boles and Mr. Bill Barris, representing City of Winslow; Ms. Fern Larson and Mr. Ronald Eisele, representing City of Holbrook; Mr. G. Buck Butler, Mr.

Harold Lesueur and Mr. Richard Udall, representing Round Valley Water Users; Mr. Stephen G. Bartell, representing the U.S. National Park Service, U.S. Forest Service and Bureau of Land Management; Ms. Jane Marx, Mr. Barton Martza, Ms. Joan M. Sandy and Ms. Rosemary Panteah, representing the Pueblo of Zuni; Mr. Harry Sachse, Mr. A. Scott Canty, Mr. James Meggesto, Mr. Ron Morgan, Mr. Wallace Youvella, Mr. Peter Whiteley, Mr. T. J. Ferguson, Mr. Wayne Taylor, Mr. Colin Hampson, Mr. Leroy Lewis and Mr. Donald A. Sumetewa, representing the Hopi Tribe; Mr. Stanley Pollack and Mr. Scott McElroy, representing the Navajo Nation; Ms. Cynthia Chandley and Mr. Mark Boswell, representing Phelps Dodge; Mr. Graham Clark, representing the Office of the Attorney General for the Arizona State Land Department; Ms. Jan Ronald and Mr. Gregg Houtz, representing Arizona Department of Water Resources; Mr. William Staudenmaier, representing Arizona Public Service, Phelps Dodge and Aztec Land & Cattle Co.; Mr. John B. Weldon, Jr., Mr. Frederic Beeson and Ms. Brenda Burman, representing Salt River Project; Ms. Vanessa Boyd, representing the U.S. Department of Justice (Indian Resources Section); Mr. Richard Bertholf, representing Southern California Edison; Mr. Lauren J. Caster and Mr. Donald Blankenau, representing Abitibi Consolidated, the Arizona Water Company, Santa Fe Pacific Railroad Company and Burlington Northern Railroad Company; Mr. Skip Hellerud, Abitibi Consolidated; Ms. Lee Storey, representing the City of Flagstaff; Mr. Mitchel D. Platt, representing various claimants; Mr. Michael Foley, representing the Navajo Nation Department of Water Resources; Mr. Peter Fahmy and Mr. William W. Quinn, representing the Department of the Interior (Office of the Solicitor); Mr. William Darling, representing Cameron Trading Post & Atkinson Trading Company; Mr. John Cawley, Department of the Interior/Bureau of Indian Affairs; Mr. Robert Brauchli, White Mountain Apache Tribe; Mr. Ron Billstein, representing HKM Engineering, Inc.; Mr. Eldon Pulsipher, representing Lyman Water Company; Mr. G. C. Bay, representing Brusally Ranch Vernon; Ms. Cynthia Haglin, representing City of Chandler; Mr. John Ward, representing Hydro Geo Chem, Inc.; Mr. Dan Heap, representing St. Johns Irrigation Pres.; Mr. Robert Sejkora, representing Arizona State Parks; and Mr. Danny D. Gradle, representing APS, Cholla Power Plant.

There are individuals present that did not sign in.

Also in attendance: Special Master George A. Schade, Jr.; Kathy Dolge, Assistant to the Special Master; and Judge Michael C. Nelson, Presiding Judge of Apache County Superior Court and Settlement Judge in the Little Colorado River General Stream Adjudication.

JOINT MOTION TO CLARIFY COURT'S DIRECTIVE REGARDING  
REIMBURSEMENTS FROM THE FUND OF FILING FEES

The Court inquires if anyone wishes to be heard on this motion. The Court states that, prior to the recent amendment to the statute, A.R.S. Section 45-255(B) could not be read to authorize reimbursement for some expenses. It appears that the amendment, which takes effect in August, was passed to indicate the legislature's intent that reasonable expenses related to settlement work should be subject to reimbursement. The Court asks if anyone has an argument against the Courts position.

There appears to be no argument.

STATUS OF SETTLEMENT DISCUSSIONS

The Court welcomes comments and states its position as trial judge regarding specifics with respect to settlement negotiations.

Mr. Stephen G. Bartell, on behalf of U.S. Forest Service, National Park Service and Bureau of Land Management, advises that with the help of Judge Nelson, they have been working on four drafts and that the next Settlement Meeting is July 11, 2002. He feels they are making great progress towards an agreement.

Upon inquiry by the Court, Mr. Bartell estimates completion of talks in 6 to 12 months, as there are a number of issues to be resolved.

Judge Ballinger discusses the history of the case as to the stays of litigation and the progress of settlement.

Mr. Bartell informs the Court of a particular issue that the involved parties are anxious to resolve and move forward. If the issue is resolved, it will bring the parties very close to a general agreement. He recites the various claimants that have been engaged in the process and are hoping for a settlement agreement.

Ms. Jane Marx, on behalf of the Zuni Tribe informs the Court that they are hours away to settling the Zuni Water Rights and states they are finalizing documents this afternoon.

Mr. Harry R. Sachse, on behalf of the Hopi Tribe, states they have been trying everything to bring about settlement including the Lake Powell pipeline. He states he does not see anything happening in the next few months, as there is no congressional support until the Kyle Study is finished.

Mr. Stanley Pollack, on behalf of the Navajo Nation, advises there are no ongoing negotiations dealing with settlement and gives a history of negotiations that took place between 1994 and the summer 2000, when the impetus for settlement dissipated. He states attempts were made to renew negotiations, but all that was discussed was the development of a firm drinking water supply for the Navajo Nation. He also addresses the Kyle Study and mentions the lack of support from the Interior Department. He states he cannot say they are close to settlement, and he reluctantly supports litigation.

Mr. David A. Brown, on behalf of various clients, addresses litigation of small claimants, followed by discussion with the Court. Mr. Brown reads a list of his may small clients. The small claimants are very interested in settlement.

NAVAJO NATION'S MOTION TO SET A TRIAL DATE AND DISCOVERY  
SCHEDULE FOR SHOW LOW LAKE, SHOW LOW IRRIGATION COMPANY,  
AND LAKESIDE IRRIGATION COMPANY

The Court informs the parties that all of the memoranda were reviewed and requests those who oppose the motion to speak first.

Ms. Cynthia Chandley, on behalf of Phelps Dodge, addresses the Court regarding the HSR. She states that the 1995 amendments to the adjudication statutes require updating the Silver Creek Watershed HSR, followed by a 180-day objection period. It is not possible to simply revive the old objections. The entire watershed should be adjudicated and piecemeal litigation of claims avoided. She states that it would take one year for the parties to prepare the Show Low Lake case for trial. She states that water from Show Low Lake has not been used in Morenci since January 1, 2002.

Mr. David A. Brown states his position that Hopi and Navajo claims should be addressed first. Many changes have occurred since the Silver Creek HSR was published, for example, the irrigation companies that are the subject of this motion have undergone organizational changes. He states that numerous watershed file reports in the Silver Creek Watershed HSR will have to be updated.

The Court reiterates his concern that no one is ready to adjudicate a single claim.

Mr. Graham Clark, on behalf of the Office of the Attorney General for the Arizona State Land Department, informs the Court that they did not file a response, but offers comments. He suggests that in order to reduce the uncertainty of the size of federal reserved rights, ADWR should proceed with the Hopi HSR and the Court should proceed with the determination of Indian reserved water rights, because anything that would reduce the uncertainty of federal reserved rights would be helpful. He raises the possibility that federal reserved rights may attach to the sections of state land given in trust by the federal government at statehood. The State is prepared to file a summary judgment motion on this issue.

Mr. Scott McElroy, on behalf of the Navajo Nation, reluctantly agrees not to litigate the Show Low Irrigation Company and Lakeside Irrigation Company claims. He states that the Show Low Lake case is the most advanced toward a hearing, and it would take the parties six months to prepare for trial.

Ms. Chandley makes a final comment that transbasin diversions are legal in Arizona, and the practice deserves no more scrutiny than any other claim in the adjudication.

#### STAFFING AND RESOURCES TO COMPLETE HOPI HSR

The Court addresses Ms. Jan Ronald of the Department of Water Resources and advises that there is a statute that requires the Department to provide to the Court technical assistance expeditiously. The Court further states its belief that the adjudication has priority over the department's other statutory duties and expresses concern about the resources assigned to the adjudication.

Ms. Jan Ronald indicates she shares the concern, but the department's budget was severely slashed, and there is a very limited travel budget.

Upon inquiry by the Court, she further addresses other statutory duties.

Additional discussion follows concerning Indian HSRs.

Ms. Ronald asks the Court for direction and inquires what the Court wants them to do. She states that ADWR does not have an adjudication section, but can pull

resources from other areas. She informs the Court that the department cannot work on both the GRIC HSR and the Hopi HSR with current staffing, and the department cannot commit to working on more than one HSR at a time. She states the department would have to add technical expertise to get it done and expresses financial concern. She advises that the former adjudication section employees were redistributed as part of a reorganization.

The Court expresses concern regarding the Department's adjudication duties.

11:08 a.m. - Recess.

11:18 a.m. - Reconvened in Open Court.

The Court gives Ms. Ronald some directions regarding the HSR's.

Ms. Ronald addresses Fort Huachuca case, the PWR 107 claims, and Coronado National Memorial claims that are before the Special Master. She suggests that the Court be aware of the number of tasks the department is expected to address at the same time.

Upon inquiry by the Court, Mr. George A. Schade, Jr., Special Master states he wants to address those issues and asks the Court to ask the Department of Water Resources to include those three cases and their staff requirements and expenses in the department's report.

The Court asks Ms. Ronald when the department could produce a report concerning staffing and resources. Ms. Ronald suggests July 19, 2002, as the date such a report could be filed.

#### NAVAJO NATION'S MOTION TO DIRECT THE SPECIAL MASTER TO REPORT ON ADWR'S PROCEDURES TO PROVIDE TECHNICAL ASSISTANCE

The Court states its position on Arizona Rule of Evidence 408.

Mr. Scott McElroy, on behalf of the Navajo Nation, states that their concern about the department's use of information obtained during settlement negotiations is whether or not there truly is a "firewall" at ADWR separating the people who provide technical assistance to settling parties and those who prepare the HSRs.

Mr. Gregg Houtz, on behalf of the Department of Water Resources, explains the firewall, states he took over Mr. Pierce's role in settlement talks, and gives a report. Mr. Houtz states he reads the department's technical reports but does not suggest any changes.

Mr. McElroy continues by expressing concern about the department's use of information obtained during settlement negotiations and explains that the Navajo Nation's position is that all it is asking for is the establishment of a firewall and confirmation that a firewall exists.

#### STATE PARTIES' MOTION RE HOPI HSR ISSUES

Mr. William Staudenmaier, on behalf of Arizona Public Service and Aztec Land & Cattle Co., states this motion was filed in response to Judge Dawson's order that the parties identify issues for briefing and oral argument.

The Court hears argument regarding the motion.

Discussion is held regarding the Hopi Tribe's right to use water from the mainstream of the Little Colorado River, Settlement Act of 1996, and land being acquired by the Hopi Tribe. Mr. Staudenmaier states that these issues should be briefed.

Mr. Staudenmaier states he does not know current status of those lands being transferred into a trust and continues his argument.

The Court asks to hear from the Hopi Tribe.

Mr. Harry Sachse, on behalf of the Hopi Tribe, states that new Hopi lands are not currently in trust, but that as lands are taken into trust, the Hopi Tribe will notify the Court and parties within thirty days after a transfer. He states that the issue of whether the Hopi Tribe has the right to take water from the Little Colorado River should be decided as a legal issue, and the Hopi Tribe would oppose such a motion. The Hopi Tribe would not oppose a motion addressing the issue of the impact of the 1996 Settlement Act. He addresses the issue of the water rights of the new Hopi lands and states that there is an issue as to whether rights for new lands should be part of the Hopi HSR or of the HSR for state right claims.

Mr. John Weldon, Jr., on behalf of Salt River Project, mentions one more issue, that is whether the water right claims to be tried are affected by any prior judgments or decrees or other statutory enactments. He states, for example, that the Hopi Tribe's 26 Bar Ranch is within the Norviel decreed lands.

Upon inquiry by the Court, Ms. Ronald states she has no comments to add on behalf of DWR.

JOINT MOTION TO CONFIRM BINDING EFFECT, AS BETWEEN  
SIGNATORY PARTIES, OF STIPULATIONS ADDRESSING  
SPECIFIED WATER RIGHTS CLAIMS

The Court asks to hear from anyone in opposition to the Court approving the stipulations submitted and explains his view of those stipulations.

Mr. Scott McElroy, on behalf of the Navajo Nation, expresses concern relating to the motion for approval. He states his understanding of the stipulations and the relationships between the stipulating parties. He states the concern is not so much with the language but with the view that any adverse effect that might result from the stipulations shall be only on the signatories. He states that the relationships between the stipulating parties and their stipulations, if approved by the Court, should not interfere with the administration of the final decree.

Discussion concerning signatories.

Mr. William Staudenmaier on behalf of Arizona Public Service, Phelps Dodge and Aztec Land & Cattle Co. states he agrees with the Court's interpretation of the stipulations. He states that the intent of the signatories is that the stipulations, as approved by the Court, shall be binding only on the parties who signed the stipulations.

The Court informs the parties it will issue an order that specifically recites that the stipulations are approved, but will be binding only on the signatories.

Mr. Gregg Houtz, on behalf of Arizona Department of Water Resources, advises there were discussions about not binding DWR with respect the abstracts or analyzing and reporting the abstracts in an HSR, but only make them a part of the HSR. He asks that the Court consider this point when approving the stipulations.



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Mr. Stephen G. Bartell, on behalf of U.S. Forest Service, National Park Service and Bureau of Land Management, states he concurs with the Court's interpretation.

Ms. Vanessa Boyd, on behalf of U.S. Department of Justice representing the Indian interest in the Little Colorado River Basin, makes a record of agreeing to the stipulations of the National Park Service or Forest Service at this time, but the United States reserves the right to challenge in the future on behalf of Indian Tribes, the agreements made in the stipulations.

Discussion follows regarding scheduling the next status conference. The next Status Conference shall be held on Tuesday, October 08, 2002 at the hour of 9:30 a.m. in the Apache County Superior Court.

12:05 p.m. - Hearing adjourned.

The original is filed with the  
Apache County Superior Court.

A copy of this Minute Entry is  
mailed to parties on the Court-  
approved mailing list for  
CV-6417 dated July 16, 2002.

Recorded in Minute Book  
CV 2002-06 By: BJSilversmith

