

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE
THE HONORABLE JOHN TAYLOR, PRESIDING JUDGE**

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

SUE HALL, Clerk

COURT REPORTER: Susan Humphrey

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 24, 2003 TIME: 9:28 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	(6)
DATE OF FILING	July 17, 2003

MINUTE ENTRY

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

APPEARANCES

Mr. David Brown, representing various clients; Mr. Stephen G. Bartell, representing the U.S. Department of Justice (General Litigation Section); Ms. Jane Marx, Mr. Edward W. Wemytewa, Mr. Wilfred Eriacho, Sr. and Ms. Rosemary Panteah, representing the Pueblo of Zuni; Mr. A. Scott Canty, and Mr. Colin Hampson, representing the Hopi Tribe; Mr. Stanley Pollack and Mr. Scott McElroy, representing the Navajo Nation; Mr. Graham Clark and Mr. Thomas Shedden, representing the Office of the Attorney General for the Arizona State Land Department; Ms. Jan Ronald, Mr. Gregg Houtz, Mr. Rich Burtell and Mr. Tom Whitmer, 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. Alexandra M. Arboleda, representing Salt River Project; Ms. Vanessa Boyd Willard, representing

the U.S. Department of Justice (Indian Resources Section); 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; Ms. Lee Storey, representing the City of Flagstaff; Mr. Mitchel D. Platt, representing various claimants; Mr. William W. Quinn and Mr. John Doney, representing the Department of the Interior (Office of the Solicitor); Mr. William Darling, Cameron Trading Post & Atkinson Trading Company; Ms. Lori Osterstock and Ms. Mary Ann Joca, representing USDA - Forest Service; and Ms. Lin Fehlmann, BLM Water Rights Specialist.

Also in attendance: The Master George A. Schade, Jr.; Kathy Dolge, Assistant to the Special Master; and Honorable Michael C. Nelson, Settlement Judge in the Little Colorado Stream Adjudication.

STATUS OF SETTLEMENT DISCUSSIONS

Upon inquiry by the Court regarding the status of the Pueblo of Zuni Settlement Agreement, Ms. Jane Marx on behalf of the Zuni Tribe, states President Bush signed the Zuni Indian Tribe Settlement Act. She asks the Court to recognize the Water Rights Team, Edward Wemytewa, Rosemary Panteah and Wilfred Eriacho.

Judge Ballinger congratulates the parties.

The Court inquires concerning the status of negotiations of the Navajo Nation, Hopi and San Juan Southern Paiute Tribe settlements.

Mr. Stanley Pollack, on behalf of the Navajo Nation, reports that there have not been any settlement negotiations, but the Navajo and Hopi Tribes are active in the development of an alternate water supply for Peabody. He states they have been in discussion with the Department of Interior, Peabody, Peabody's customers, SRP and Southern California Edison to try to develop an alternate water supply. He also states the most recent alternative involves using C-aquifer water from the southern portion of the Navajo reservation and building a pipeline to Peabody's mine. If the project were successful, that piece of infrastructure could be utilized for municipal water supply for both tribes and it could provide the seed for settlement of tribal water claims by providing water to both the Navajo and Hopi communities.

Mr. Pollack further states there is an ongoing matter referred to as the Kyl Study and advises that the consultant working for the Bureau of Reclamation (HDR Associates) has put together a preliminary report. It is the understanding of the

parties that they would be receiving a draft report that could be shared with the settlement committee for the Little Colorado River.

He advises that the Bureau of Reclamation came out with a usable draft, parties are submitting comments on the document and asking that certain items be re-evaluated.

The Court recites his understanding of the Kyl Study. Mr. Pollack states that the Court's understanding is closer to what the parties anticipated. He further states his thoughts about the report for settlement discussions. Then at that point, they would ask Judge Nelson to reconvene settlement discussions of the parties.

Mr. Colin Hampson, representing the Hopi Tribe, reports the Hopi Tribe is involved in discussions regarding the proposal to construct the pipeline pumping water from the C-aquifer for Peabody which may provide some water supply. He states the Hopi Tribe also met with the Navajo Nation on other issues exploring possible areas for settlement and expect to move forward in those discussions.

Mr. Gregg Houtz, on behalf of the Arizona Department of Water Resources, reports the department has participated in the Black Mesa Studies and the Kyl Study. He states they have heard that the Bureau of Reclamation released a draft. Upon inquiry by the Court regarding the length of time to brief the Secretary's office and Senator Kyle's staff, Mr. Houtz states they hope to have it done by the end of the next week. He is working on State legislation and hopes to have a bill introduced by a member of the legislature in December.

The Court inquires on the progress concerning the Federal non-Indian water rights.

Mr. Stephen G. Bartell, on behalf of U.S. Department of Justice (General Litigation Section) reports they have had four settlement meetings in Phoenix and have come up with a new draft of a general settlement agreement. He states they are on their fifth draft. The issues continue to deal with ground and stock water rights on Federal lands. He feels they are making progress as they continue to narrow the issues.

ADWR's REPORT ON SERVICE OF NEW USE SUMMONS

The Court inquires of the status of the Arizona Department of Water Resources New Use Summons.

Ms. Jan Ronald, on behalf of Arizona Department of Water Resources, states the New Use Summons process was being completed through 2002 and they are working on completing the settlement process on the Gila case through 2002.

Upon inquiry by the Court regarding the budget cuts, Ms. Ronald states they have been able to maintain the same budget as last fiscal year and they are not going to experience any further reduction in staff, but the following fiscal year is uncertain as some of the funding sources may not be available. She states they are optimistic about their ability to respond to the Court's request for assistance, including the updated work on the Hopi HSR. She states the Hopi HSR will continue to be a significant intensive undertaking as opposed to updating the WFR. The Hopi Statement of Claimant amendments are not due until end of the calendar year and they are continuing to review the documentation.

REPORT ON SHOW LOW LAKE CONTESTED CASE

George A. Schade, Jr., Special Master gives a report on the Show Low Lake contested case. He states this case involves the determination of water rights of Phelps Dodge Corporation to Show Low Lake and references the referral of this matter to the Special Master. On February 4, 2003, a Status Conference was held in Pinetop/Lakeside where four major issues were addressed:

1. - A report from Counsel for Phelps Dodge indicating they were in the negotiation process with the White Mountain Apache Tribe for easements over reservation land. Negotiations were going to take some time which introduced an additional time element;
2. - Discussion on Phelps Dodge severing and transferring their water right from Morenci to Miami,
3. - Department of Water Resources indicated it would take a week for it's staff to do investigations and about two months to prepare a contested case HSR;
4. - Memorandum decision that Special Master Thorsen issued in 1992 regarding transbasin diversion. The water rights that Phelps Dodge claims in Show Low Lake involve a diversion of water from the Little Colorado Watershed, the storage water and the transportation of that water through pipelines, a natural creek into the Salt River watershed and the upper Gila River Watershed.

The Special Master recites the various directives to the Arizona Department of Water Resources contained in the memorandum decision.

The Special Master also reports what happens after the Arizona Department of Water Resources files the contested case HSR. There is a report in this Court addressing those issues in the matter of the Gila River Adjudication. Pending the Court's consideration, parties will know what to do regarding notice and objections. He advises that four motions were identified that may impact the contested case. Those motions will be taken up in the future and no orders were issued regarding disclosure or discovery. He further states the abeyance was lifted last summer to allow discovery to proceed, so discovery is allowed in the Show Low Lake contested case and parties were encouraged to meet for possible resolution. He expects to have another Status Conference next summer and by then, the Arizona Department of Water Resources will have published their supplemental contested case HSR and the Court would have addressed the notice and objections issues.

The Special Master informs the Court that Phelps Dodge has not used the water since January 2002, and explains the purpose of the negotiations and further states that without this easement, water cannot be transported. There is no indication as to when these negotiations would conclude.

The Court addresses any delays that may be caused by the negotiations and states a number of items identified that would allow for setting of a final resolution hearing.

The Special Master states his goal is to complete the case by 2005.

Mr. William Staudenmaier, on behalf of Arizona Public Service and Aztec Land & Cattle Co., informs the Court he is here on behalf of Phelps Dodge today. He states Ms. Chandley indicated that Phelps Dodge will submit its updated statement of claimant and that the negotiations with the White Apache Tribe are ongoing. As to the timing of a hearing, he is sure Phelps Dodge will work with whatever the court instructs.

REPORT ON LEGISLATIVE APPROPRIATIONS REQUEST FOR FY'04

Special Master Schade reports on the outcome of the efforts to obtain the first legislation appropriations for an adjudication. The filing fees will not be sufficient to cover the expenses beginning fiscal year 2004. A year ago they looked at the balance of filing fees and a series of actions were taken to address the dwindling

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fund. He recites the actions taken. Additionally, his office encouraged the Arizona Department of Water Resources to send out new use summons in an effort to bring new fees into the fund. Legislative packets were submitted for an appropriation of \$20,000.00. He further advises that the Arizona Department of Water Resources sent out 3099 summons which has generated \$14,500.00 for the fund. The appropriation request for \$20,000.00 was approved by the governor. He advises they have begun to put together the budget request for 2005.

The Court states this concludes the topics of the agenda and asks for additional comments.

Discussion concerning the next hearing date.

IT IS HEREBY ORDERED the next Status Conference shall be held on **Wednesday, October 15, 2003** at the hour of **9:30 a.m.** in the Apache County Superior Court.

10:11 a.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 17, 2003.

Recorded in Minute Book
CV 2003-06 By: BJSilversmith