

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/23/2015

CLERK OF THE COURT
Form V000

JUDGE MARK H. BRAIN

T. Springston
Deputy

W1-103

FILED: May 20, 2015

In re Subflow Technical Report,
San Pedro River Watershed

W1-103

In re Revised Subflow Zone Delineation
Report for the San Pedro River Watershed
(April 2014) Prepared by the Arizona
Department of Water Resources

In re Salt River Project's Motion to Designate
Contested Case on Verde River Subflow

In re City of Cottonwood's Motion to Designate
Contested Case to Determine the Water
Rights of the Yavapai-Apache Nation

In re Status Conference

MINUTE ENTRY

East Court Building – Courtroom 413

9:35 a.m. This is the time set for a status conference before Judge Mark H. Brain, to resolve the remaining objections to the supplemental subflow technical reports.

The following attorneys appear telephonically:

- Patrick F. Barry on behalf of the United States;
- J. Albert Brown and David Albert Brown on behalf of Gila Valley Irrigation District, Franklin Irrigation District and City of Cottonwood;
- Stephen C. Cann on behalf of The Nature Conservancy; and

- L. William Staudenmaier on behalf of APS and Roosevelt Water Conservation District.

The following attorneys appear in-person:

- Sean T. Hood on behalf of Freeport Minerals Corporation;
- Thomas L. Murphy on behalf of Gila River Indian Community;
- Christopher W. Payne on behalf of BHP Copper, Inc.;
- John B. Weldon, Jr., Mark A. McGinnis and Patrick B. Sigl on behalf of Salt River Project;
- Cynthia J. Haglin on behalf of City of Chandler;
- Gregory L. Adams on behalf of ASARCO LLC;
- William H. Anger on behalf of cities of Avondale, Chandler, Glendale, Mesa and Scottsdale;
- Charles L. Cahoy on behalf of City of Tempe;
- William P. Sullivan on behalf of Pueblo Del Sol Water Co., City of Sierra Vista, Liberty Utilities (Bella Vista Water Company) Corp.;
- Cynthia S. Campbell on behalf of City of Phoenix;
- Julie Lemmon on behalf of Maricopa County;
- Carrie J. Brennan on behalf of State of Arizona;
- Robyn L. Interpreter on behalf of the Yavapai-Apache Nation and Pascua Yaqui Tribe;
- Joe P. Sparks and Julia M. R. Kolsrud on behalf of the San Carlos Apache Tribe and the Tonto Apache Tribe; and
- Janet L. Miller and Nicole D. Klobas on behalf of the Arizona Department of Water Resources.

Court reporter MaryLynn LeMoine is present and a record of the proceedings is also made by audio and/or videotape.

THE COURT DIRECTS the persons/attorneys joining via telephonic conference who wish to make an appearance to send their names and the names of the parties that they represent to the division's judicial assistant at ellisonr@superiorcourt.maricopa.gov.

Discussion is held regarding how to resolve the objections to the technical subflow report.

Mr. Hood requests a three to four day evidentiary hearing with specific time limits for testimony. He is willing to skip formal discovery for the hearing. Ms. Miller and Mr. Adams agree that an evidentiary is necessary. Mr. McGinnis and Mr. Sparks indicate that no evidentiary hearing is necessary.

Discussion is held regarding the possibility of appeal, a previous evidentiary hearing and maps.

Discussion is held regarding witnesses for the evidentiary hearing. Mr. Barry indicates that they may bring Mr. Page for the hearing if a hearing is held and that from his perspective no evidentiary hearing is necessary.

Based upon matters presented to the Court,

THE COURT FINDS that a hearing is necessary.

Scheduling is discussed.

The Court informs the parties that because of the Court's rotation to a criminal calendar in June, the trial and hearing calendar will be from 10:30 a.m. to 4:30 p.m.

IT IS ORDERED setting a four (4) day evidentiary hearing on **August 31, 2015 at 10:30 a.m. (hearing dates: August 31, 2015 – September 3, 2015)**, at which time the Court will hear testimony regarding objections to the technical subflow report. Please note: Judge Brain will be located in the Central Court Building, Courtroom 1201 beginning June 22, 2015.

IT IS FURTHER ORDERED as follows:

- The Arizona Department of Water Resources shall submit the revised corrected maps by **May 8, 2015**.
- Experts' affidavits are admissible and additional time is allocated as follows: one (1) hour for direct examination; two (2) hours for cross examination; and 15 minutes for redirect examination.
- The parties shall file a Rule 26.1 disclosure by **June 1, 2015** if the experts are going to rely on anything that has not been previously disclosed.
- The parties shall coordinate and create a trial schedule.
- The parties may file supplemental affidavits regarding expert responses to the Rule 26.1 disclosures.

Discussion is held regarding the necessity of a pre-hearing conference, exhibits and who may participate in the hearing. As result,

IT IS ORDERED as follows:

- No formal pre-hearing conference will be held. Any pre-hearing issues that arise will be addressed during the Aravaipa trial in July.
- Exhibit guidelines are listed below.
- Mr. Barry, Mr. David Brown and their clients are allowed to participate in the evidentiary hearing.

10:12 a.m. Matter concludes.

LATER:

Exhibits shall be delivered to the division by **4:30 p.m. August 19, 2015.**

EXHIBIT GUIDELINES:

- Exhibits shall be marked serially by number, plaintiff's first; defendant's exhibit numbers will begin where plaintiff's numbers end.
- Confer with the other party to eliminate duplicate exhibits before presenting to the clerk.
- Submit a written list or inventory describing each exhibit; descriptions should be concise and can be as simple as "letter," "e-mail," or "photo".
- Do **not** skip numbers, or describe exhibits as "blank" or "withdrawn"; do not "reserve" numbers for items not submitted to the clerk.
- Do not submit exhibits with subparts (e.g. exhibit 1a, 1b, 1c).
- Staple or otherwise secure each individual exhibit so that pages do not become separated.
- Separate exhibits by a colored sheet of paper with the exhibit number written on front.
- If an exhibit is too heavy or large for a hanging file folder, place it in a binder.
- Do not mark depositions as exhibits; original depositions may be submitted to the division clerk to be filed and will be available for use during the trial.
- Blow-up charts and large items may only be used for demonstrative purposes. Counsel may bring blow-up charts and large items to court to use during trial; however, if counsel would like any blow-up charts or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph of the item.
- Provide a separate copy of exhibits, in a binder with numbered tabs, to the court to be referenced by the Judge during trial; Alternatively, if counsel intends to submit more than 50 exhibits, please provide a courtesy copy of the exhibits in a thumb drive (flash drive) for the Judge to access on his computer (instead of in a binder); If any exhibits are spreadsheets, please provide an additional hard copy.
- Contact the clerk at 602.506.6928 if you have questions regarding exhibits.

If you wish to appear telephonically, please follow these instructions:

1. Dial 1-877-820-7831.
2. Dial Participant Pass Code 2743132#.
3. For assistance, if needed, dial 1-800-485-0844 / option 2.

Current location:

Judge Mark H. Brain
Maricopa County Superior Court
East Court Building
101 West Jefferson Street
4th Floor, Courtroom 413
Phoenix, AZ 85003
Tel: 602.372.1141

New location as of June 22, 2015:

Judge Mark H. Brain
Maricopa County Superior Court
Central Court Building
201 West Jefferson Street
12th Floor, Courtroom 1201
Phoenix, AZ 85003
Tel: 602.372.1141

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case Number W1-103 dated April 30, 2015.