

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

2/14/07

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

L. NEVENHOVEN
Deputy

W-1, W-2, W-3, W-4(Consolidated)

COPY

Contested Case No. W1-207

FILED: 2/26/07 8:00 a.m.

In Re the General Adjudication
of All Rights to Use Water in
The Gila River System and Source

In Re Proposed Gila River Indian
Community Settlement Proceedings

Oral Argument re matters
concerning the objection filed by:
ASARCO LLC

MINUTE ENTRY

Northeast Courtroom 112

3:16 p.m. This is the time set for an Oral Argument re matters concerning the objection filed by ASARCO LLC ("ASARCO"). Present are: Mike Pearce on behalf of ASARCO; Susan B. Montgomery, Joe Sparks, and Robyn Interpreter on behalf of San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe (collectively "the Apache Tribes"); Cindy Chandley and John C. Lemaster on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users; Donald R. Pongrace, John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, Jennifer Giff, and Rodney B. Lewis on behalf of the Gila River Indian Community; F. Patrick Barry on behalf of the United States (telephonically); Marilyn D. Cage on behalf of the City of Goodyear; William Anger on behalf of the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, and Scottsdale; John B. Weldon, Jr. on behalf of Salt River Project; Charlotte Benson on behalf of the City of Tempe; Bill Sullivan on behalf of the Town of Gilbert; Riney B. Salmon on behalf of the San Carlos Irrigation and Drainage; Mark A.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

2/14/07

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

L. NEVENHOVEN
Deputy

W-1, W-2, W-3, W-4(Consolidated)

COPY

Contested Case No. W1-207

McGinnis on behalf of LAWCO, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District. Special Master George A. Schade, Jr. is present.

Court Reporter, Lynn Cronin, is present.

Michael Pierce presents argument to the Court regarding the form of decree of the proposed settlement and the possibility of any future litigation being prejudiced.

Don Pongrace presents argument to the Court on behalf of Gila River Indian Community regarding the proposed settlement.

John Weldon presents argument to the Court on behalf of Salt River Project regarding the parties subject to the decree.

IT IS ORDERED taking this matter under advisement. The matter will be deemed submitted, and the Court will rule by minute entry within 60 days.

4:19 p.m. Matter concludes.

LATER:

On February 14, 2007, the Court heard oral argument on the requests of the Gila River Indian Community ("GRIC" or the "Community"), Phelps Dodge Corporation, and the Roosevelt Water Conservation District (collectively the "Moving Parties") to dispose summarily ASARCO LLC's ("ASARCO") objection to the proposed settlement agreement and judgment and decree of the Gila River Indian Community's water rights in the Gila River Adjudication and ASARCO's cross-motion for summary relief.

The Court finds that it cannot consider ASARCO's objection to the extent it is based upon allegations that the proposed settlement agreement and judgment and decree (the "Settlement Documents") violate federal or state equal protection principles or constitute a breach or anticipatory repudiation of a contractual relationship. Those claims are properly raised in another forum.

The Court also finds that ASARCO has failed to establish that there is a dispute as to a material fact concerning its position that notwithstanding any quantification of the water rights

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

2/14/07

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

L. NEVENHOVEN
Deputy

W-1, W-2, W-3, W-4(Consolidated)

COPY

Contested Case No. W1-207

granted to GRIC, provisions within the Settlement Documents and state legislation creating the Gila River Maintenance Program enacted as a part of the proposed settlement, provide the Community with greater water rights than could be established at trial. The Moving Parties have shown entitlement to judgment on this portion of the objection as a matter of law.

ASARCO also asserts that the form of judgment and decree submitted by the parties to the settlement is ambiguous and could prejudice ASARCO in future litigation. Should the settlement be approved, the Court intends to issue a separate ruling memorializing the extent of its review of the Settlement Documents. At the hearing, ASARCO's counsel acknowledged that this commitment would render moot this component of ASARCO's objection.

Finally, ASARCO claims that the evidence will show that the Settlement Documents grant GRIC rights to a quantity of water subject to this Court's jurisdiction that is greater than the Community could establish at trial. The Moving Parties have not demonstrated that summary disposition is appropriate for this portion of ASARCO's objection.

Based upon the foregoing,

IT IS ORDERED:

1. Denying ASARCO's cross-motion for summary judgment.
2. Granting the Moving Parties' motion for summary disposition except with respect to that portion of ASARCO's objection that relates to the quantity of water originating from sources subject to this adjudication that GRIC would receive should the Court approve the Community's proposed settlement.

/s/ Eddward P. Ballinger, Jr.
JUDICIAL OFFICER OF THE SUPERIOR COURT

A copy of this order is mailed to all parties on the Court-approved mailing list for Contested Case No. W1-207 dated July 7, 2006.