

SUPERIOR COURT OF ARIZONA
APACHE COUNTY

05/05/2010

CLERK OF THE COURT
FORM V000

SPECIAL MASTER GEORGE A. SCHADE,
JR.

R.Tomlinson

Deputy

COPY

FILED: 05/17/2010

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

CV 6417-201

In Re Telephonic Status Conference Regarding
Settlement Negotiations of the Claims of the
Hopi Tribe and the Navajo Nation

MINUTE ENTRY

9:30 a.m. In chambers. This is the time set for a Telephonic Conference at the request of Arizona Public Service Company ("APS") for the purpose of updating the Special Master regarding developments in the ongoing negotiations for settlement of the claims of the Hopi Tribe and the Navajo Nation. Appearing telephonically are: Janet L. Ronald on behalf of the Arizona Department of Water Resources ("ADWR"); Harry R. Sachse, Reed Peyton Chambers, A. Scott Canty, and Colin Cloud Hampson on behalf of the Hopi Tribe; Stanley M. Pollack, Bidtha N. Becker, Scott B. McElroy, and Daniel E. Steuer on behalf of the Navajo Nation; Vanessa Boyd Willard on behalf of the United States Department of Justice; L. William Staudenmaier on behalf of Arizona Public Service ("APS"); David A. Brown on behalf of various Little Colorado River claimants; John B. Weldon, Jr., Lisa McNight, and Patrick B. Sigl on behalf of Salt River Project ("SRP"); Theresa M. Craig, Assistant Attorney General on behalf of the State of Arizona; Susan B. Montgomery on behalf of the Yavapai Apache Nation; Lauren J. Caster and Gregory L. Adams on behalf of Catalyst Paper (Snowflake) Inc.; and Lee A. Storey on behalf of the City of Flagstaff. Present in chambers are Special Master, George A. Schade, Jr. and assistant Barbara K. Brown.

Court reporter, Amy Stewart, is present.

This hearing having been granted at the request of Arizona Public Service, Mr. Staudenmaier provides Special Master Schade the following update with respect to the ongoing negotiations for settlement of the claims of the Hopi Tribe and the Navajo

Nation. Input from Mr. Pollack, Mr. McElroy, Mr. Sachse, Mr. Caster, Mr. Weldon, Ms. Willard, Mr. Canty, Ms. Craig, Ms. Ronald, Mr. Brown, Ms. Storey, and Mr. Hampson are encompassed in this summary of the update.

Mr. Staudenmaier: The settlement agreement has been drafted; however it is subject to a confidentiality agreement that precludes him from disclosing the details. The agreement which, in its initial phase in March of 2008, consisted of a nine page document has progressed to a one hundred and ten page document as of May 2010. The settling parties are meeting the week of May 5, 2010, to review details of the agreement for the purpose of making minor editorial changes.

Two material workload issues remain to be completed with respect to the settlement agreement, those being 1) preparation of exhibits to be attached to the agreement, including but not limited to abstracts of particular water rights and 2) briefing of the parties' respective clients in an effort to secure their approvals and signatures.

Based upon the foregoing, the parties have agreed it would be appropriate to defer further briefings in this litigation.

Mr. Pollack: The attorneys for the settling parties executed a document on March 12, 2010, entitled "approval of settlement agreement". By the signing of this document, the attorneys have agreed to recommend the approval of the agreement to their respective clients. The document has been signed by all attorneys with the exception of counsel for the United States Department of Justice and counsel for the City of Flagstaff. Accordingly, the parties are requesting at least a temporary stay in the Little Colorado River litigation, specifically the litigation with respect to the Hopi Tribe, so that the resources and expenditures may be better utilized. The Tribal attorneys have some concern regarding the approval process that will occur when presenting the settlement agreement to the Tribal Councils while the Navajo Nation and Hopi Tribes are in litigation with one another; therefore a stay in the litigation would serve the settlement well.

There is a six-month extension to the last stay in the Federal Court litigation regarding the Little Colorado River that expires on October 13, 2010. The parties agree that a stay in the Superior Court litigation until October 13, 2010 would be advantageous to the settlement agreement.

Special Master Schade: Inquires as to what the parties are specifically requesting with respect to the briefing schedule in In re Hopi Tribe Priority.

Mr. Pollack: The parties are requesting a stay in the briefings until October 13, 2010. In the event the settlement agreement has not been signed by that time, the briefings would resume three weeks later.

Mr. McElroy: The parties have received the expert report from the Hopi Tribe on Spanish and Mexican Law. The Navajo Nation will file its rebuttal to the report on the

existing schedule. The Navajo Nation would request postponing the depositions of the three Spanish/Mexican Law experts (one from the United States, and the new experts for both the Hopi Tribe and the Navajo Nation) until after the suggested October 13, 2010 stay. The current deadline for close of discovery on Spanish and Mexican Law is August 30, 2010.

Mr. Sachse: The Navajo Nation's rebuttal report is due June 30, 2010. If the stay were granted, it would not modify the time for the Special Master to rule.

Special Master Schade: Confirmation of the current deadlines are as follows: The Navajo Nation's rebuttal to the Hopi Tribe's report on Spanish and Mexican Law is due June 30, 2010. August 30, 2010, is the completion of discovery on Spanish/Mexican Law. Motions concerning Spanish and Mexican Law rights are due on October 30, 2010, with responses thereto being due on December 15, 2010, and replies to be filed no later than January 30, 2011.

Mr. McElroy: Requests a postponement of the discovery deadline with respect to the Spanish law expert reports until after October 13, 2010.

Mr. Caster: Having been involved in the settlement efforts of the 1990's, acknowledges that this settlement agreement is worthy of supporting the postponement of further briefing and the proposed changes to the scheduling deadlines. Participation in settlement negotiations and the litigation schedule has been costly and a stay in the litigation as requested would prevent further expenditures of the clients' resources and the court's time.

Special Master Schade: Inquires as to when it is anticipated that a proposed bill will be filed in Congress, if everything goes as the parties expect.

Mr. Weldon: Introduction of a bill depends upon the execution of the settlement agreement by all the parties and Senator Kyl's review of the settlement legislation, which he has not yet had an opportunity to conduct. Conversations will continue from now until the middle of October 2010 with respect to the introduction of the bill.

Special Master Schade: Inquires as to the position of the United States regarding the settlement agreement.

Ms. Willard: The United States supports the motion for a stay of the *Hopi Tribe Priority* case. The primary difference in gaining approval or signing off on the settlement agreement involves political briefings within the administration, which can be a time extensive process. The United States has been participating in the negotiations and the appropriate people have been briefed and are participating in making decisions regarding the United States' position. The United States continues to support the negotiations moving forward. The United States, as trustee for the Navajo Nation and the Hopi Tribes, would emphasize that the six month stay in this particular litigation would be

extremely valuable to preserve the Tribes' ability to work together towards the settlement agreement instead of focusing on the litigation.

Special Master Schade: Inquires as to when it is anticipated that the settlement agreement will be presented to the Navajo Nation Tribal Council.

Mr. Pollack: The Council meets quarterly. Its next session will be held in late October. An attempt to schedule a special session prior to October 13, 2010 will be made. The process of gaining approvals of the various committees, which is required before presenting the agreement to the Tribal Council, has been started. Due to the protective order, the Navajo Nation and the Hopi Tribe's Councils will have to approve the settlement agreement prior to the agreement being presented to the other litigants' boards/committees.

Special Master Schade: Inquires as to when the agreement will be presented to the Hopi Tribe.

Mr. Canty: Depending on the final drafting of the proposed settlement agreement, it is anticipated the agreement will be presented to the Hopi Tribal Council sometime in June or July 2010.

Special Master Schade: Inquires how a stay would affect the pending matters before Judge Ballinger.

Mr. Sachse: The parties are not asking for postponement in the matters before Judge Ballinger. The issue of bringing water across the Navajo Nation's land is currently before the Arizona Supreme Court and the parties are awaiting the decision of the Court. The Catalyst Paper (Snowflake) Inc. matter regarding the Hopi Industrial Park has been resolved and the parties will be filing notification to Judge Ballinger.

Mr. Caster: Based upon the Hopi's amendment that the Hopi Tribe is in agreement with Catalyst regarding the date the Hopi Industrial Park was brought into trust, a statement will be filed with Judge Ballinger advising the Court that briefing is now moot. With respect to the settlement agreement, Catalyst will present the agreement to their board upon approval by the Tribal Councils.

Ms. Craig: The State of Arizona will request a special session with the Game and Fish Department and the Department of Parks boards once Tribal approval has been obtained.

Mr. Weldon: Salt River Project will likely need sixty (60) days in which to approve the settlement agreement.

Special Master Schade: Inquires as to whether the Hopi Tribe will request a final HSR to be completed by the Arizona Department of Water Resources.

Mr. Sachse: Due to its support of the proposed stay, the Tribe believes an informal postponement of the HSR would be fiscally advantageous.

Ms. Ronald: The Hopi Tribe has amended their claims, and amended claims have been submitted to ADWR. Those amendments have been reviewed. In the event a stay were imposed on the HSR, it would allow ADWR's resources to be utilized in other areas; however if the settlement was to be unsuccessful, the final HSR could take up to a year to complete once the litigation resumes.

Mr. Brown: Supports the stay on behalf of numerous Little Colorado River claimants. The stay would permit adequate time to work on the exhibits to the agreement. Resources to work on both the settlement and the litigation are limited. Mr. Brown anticipates 60 to 90 days would be required to schedule special board meetings once tribal approval of the settlement agreement is obtained.

Ms. Storey: The City of Flagstaff has no objection to the proposed stay. The City has not executed the "approval of settlement agreement" document; however ongoing discussions are being held. Although there is a substantial amount of work to be done, it is anticipated that the City will ultimately be a party to the agreement, as tremendous progress has been made since 2008. Ms. Story believes it will take a number of City Council meetings in order to secure an agreement.

Mr. Hampson: Suggests that the response briefs that are due May 21, 2010 and the replies to the motions for summary judgment that are due June 30, 2010, be moved to three weeks post the proposed October 13, 2010 stay.

Based upon the positions of the parties, the Special Master determines that a temporary stay until October 13, 2010 would be advantageous to the settlement efforts currently being undertaken by the parties. Accordingly, extensions to the briefing schedule will be granted as proposed by the parties herein, with the exception of the June 30, 2010 deadline for rebuttals to the Hopi Tribe's report on Spanish and Mexican Law, which will remain unchanged. A status conference will be set for advising the Special Master of the status of the settlement agreement.

With respect to Ms. Ronald's request for clarification regarding whether to continue with the final HSR, ADWR is directed to continue its work on the HSR during this limited stay in the litigation.

10:26 a.m. Matter concludes.

A copy of this order is mailed to all parties on the Court-approved mailing list for the Little Colorado River Adjudication Civil No. 6417-201 dated January 20, 2010.