

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/19/2006

CLERK OF THE COURT
FORM V000

**GEORGE A. SCHADE, JR., SPECIAL
MASTER**

M. L. Smith

CIVIL CASE NO. W1-105

FILED: January 25, 2006

**IN RE THE GENERAL ADJUDICATION OF
ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE**

10:01 a.m. This is the time set for a conference to receive comments and discuss the organization of a contested case to establish standards and guidelines for identifying agricultural, municipal, industrial, and other water uses that can and should be summarily adjudicated as *de minimis* water rights. Present are Ann Marie Chischilly and Ruth E. Koester for Gila River Indian Community, Joe P. Sparks and John Ryley for Tonto Apache Tribe, San Carlos Apache Tribe, Yavapai-Apache Nation, Pascua Yaqui Tribe, and Yavapai Apache Nation, Rebecca Goldberg, Ronnie Hawks, and Mark McGinnis for Salt River Project, R. Lee Leininger and Patrick Barry for the United States, Janet L. Ronald and Scott M. Deeny for Arizona Department of Water Resources, David A. Brown and L. Anthony Fines for Franklin Irrigation District, Gila Valley Irrigation District, Verde Valley Communities, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District, Thomas R. Wilmoth for ASARCO LLC, Arizona Water Co., and Tucson Electric Power Co., Cynthia Chandley for Phelps Dodge Corporation, L. William Staudenmaier, III for Arizona Public Service Company and Roosevelt Water Conservation District, M. James Callahan for the City of Phoenix, Marilyn D. Cage for City of Goodyear, William H. Anger for Cities of Scottsdale, Glendale, Mesa, and Chandler, Charlotte Benson for City of Tempe, and William P. Sullivan for Bella Vista Water Company, Pueblo del Sol Water Company, and City of Sierra Vista. Also present is Kathy Dolge, assistant to the Special Master.

Court Reporter, Patty Connolly, is present.

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The Special Master addresses counsel and states there is agreement in the written comments that:

1) Any determination that might be made in this contested case should apply only in the San Pedro River Watershed.

2) A body of technical and hydrological data must be compiled in order to arrive at a standard. The disagreement is on how to obtain that technical data. We need a body of technical data in order to arrive at a determination in this contested case.

3) It is premature to talk about discovery, disclosure and a briefing schedule at this point.

The Special Master requested discussion of the following issues:

1. Can the data that is needed to formulate a *de minimis* standard be obtained through test wells, or do we need a supplemental San Pedro River Watershed HSR?
2. Should we have a uniform standard or a use specific standard for other uses?

Joe Sparks suggests that the subflow zone map of the San Pedro River Watershed be drawn and the parties given a chance to object. Once objections have been addressed and the subflow zone map is approved by the Court, ADWR could prepare a supplemental HSR to update the 1991 HSR and then the Court can take up *de minimis* rights. Ronnie Hawks suggests a full supplemental HSR with a subflow zone map. Test wells could also be included. Bill Staudenmaier is in favor of a supplemental HSR because he believes the original HSR is out of date and inaccurate. Before ADWR proposes a standard or standards, the necessary technical work has to be completed with the parties given a chance to present their own expert testimony. This should be done with real wells and an analysis of the true impact. Tom Wilmoth suggests there needs to be data collected, a standard developed, and then a supplemental HSR completed.

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Jan Ronald for ADWR informs the Court the Department is not going forward with the subflow zone mapping until the Arizona Supreme Court makes a decision regarding the pending petitions for interlocutory review of Judge Ballinger's Subflow Order. The Department does not have the resources to prepare two reports at the same time and to continue with the San Pedro supplemental HSR would divert resources from the Hopi HSR process. The Court has not been aware of ADWR's decision.

An extensive discussion is held regarding the funding needed for the adjudication and the actual funding allocated in the State budgets so far presented to the Legislature. Jan Ronald states that the Department will not be receiving new funding for the adjudications for next year.

The Special Master directed the Department to file by January 31, 2006, a report informing the Court about ADWR's policy decision not to continue, or to do any work, in regard to Judge Ballinger's Subflow Order and to provide information on the Department's efforts to seek legislative appropriations for the adjudications current to the day of filing this report. The report shall also include the tasks ADWR can do this year and the tasks the Department is currently working on, including the Zuni and Gila River Indian Community Settlements.

Discussion is held regarding potential contested cases. William Sullivan, David Brown, Jan Ronald, Patrick Barry, and Cynthia Chandley address the Special Master as to whether future contested cases should address State law or federal reserved water rights. The Special Master directed the Department to compile a list of potential contested cases and provide it to the Court as part of the report due on January 31, 2006.

11:36 a.m. Hearing concludes.

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated June 15, 2005.

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