

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/22/2003

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

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

FILED: **February 20, 2003**

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

MINUTE ENTRY

9:15 a.m. Present are the following: John Weldon and M. Byron Lewis representing Salt River Project, Anthony Fines representing Gila Valley Irrigation District, David A. Brown representing Franklin Irrigation District, St. David Irrigation District and Verde Valley Communities, Lauren J. Caster representing ASARCO, Inc., Rod Lewis and John Hestand representing Gila River Indian Community, Marilyn D. Cage representing City of Goodyear, Gregg Capps, Doug Toy and Cynthia Haglin representing City of Chandler, William Anger representing Cities of Chandler, Glendale, Mesa and Scottsdale, Joe P. Sparks representing San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation, Steve Wene representing City of Safford, Rio Rico Properties and Paloma, Gregg Houtz and Janet Ronald from Arizona Department of Water Resources, Patrick Barry and Lee Leininger from the U.S. Department of Justice, M. James Callahan representing City of Phoenix, Cindy Chandley representing Phelps Dodge Corp., Bradley J. Johnston representing the Church of Jesus Christ of Latter-day Saints, Graham Clark representing the Arizona Attorney General's Office, Rick Mabery representing the Verde Valley Water Users, L.

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William Staudenmaier representing APS and RWCD, Michele Lorenzen representing RWCD, Bill Sullivan representing Bella Vista Water and Pueblo del Sol, Carlos Ronstadt representing BHP Copper Inc., Sands Investments and others. Special Master, George A. Schade, Jr. and his assistant, Kathy Dolge, are present.

Court Reporter, Steve King, is present.

The Court states the issues to be covered and the prospective outcome for today's hearing.

Bill Sullivan addresses the Court on the subflow and methodology and his suggested resolution.

Jim Callahan and Marilyn Cage address the Court on the current membership, addition and replacement of members, role and notice of meetings of the Gila Steering Committee. The Gila River Indian Community is not a member of the Steering Committee but wishes to become a member.

Lee Leininger, Joe Sparks, and Janet Ronald address the Court on various issues related to the implementation of the *De Minimis* Order in the San Pedro River Watershed. Mr. Leininger offers to submit proposed procedures for the summary adjudication of *de minimis* water rights and implementation of the Court's order adopting Special Master Thorson's report.

Gregg Houtz reports on the legislative efforts of the Arizona Department of Water Resources to increase its funding. He reports that a draft of the Kyl Report in the Little Colorado River Adjudication is expected in March with a final report to be released this summer.

Jan Ronald reports that the Arizona Department of Water Resources has mailed over 15,000 new use summonses in the Gila River Adjudication, but last year 40% were returned as undeliverable. In 2001, the return rate was 20%. She reports that the Department has done some field work on the claims

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involved in the PWR 107 case, and has found and indexed all adjudication materials which are being maintained in a central repository.

Jim Callahan inquires about the funding of the Little Colorado River Adjudication. Special Master Schade states that last summer he began the process of requesting a general appropriation of \$20,000 for the fiscal year beginning on July 1, 2004, for the Little Colorado River Adjudication.

Patrick Barry, Rodney Lewis and John Weldon address the Court on the motion of the Gila River Indian Community relating to the land and water use planning information that must be provided to the Department of Water Resources by January 29, 2003. Mr. Barry reiterates the United States' position that the information should remain confidential, 20% to 30% of the information is sensitive, and the United States can identify the documents it wishes to file under seal. Mr. Weldon states that the Gila River Indian Community should file an amended statement of claimant.

Lee Leininger discusses the issue of whether certain parties have standing to object and states that this issue should be heard after the subflow issues have been determined. Bill Sullivan and Bill Staudenmaier address the Court as to the need for a subflow methodology before determining federal reserved water rights.

A discussion is held re: Federal reserved rights in State trust lands. Graham Clark, Lauren Caster, Jim Callahan, Joe Sparks, John Weldon, and Lee Leininger address the Court. The State of Arizona has filed a motion in the Little Colorado River Adjudication, and discussion is held regarding the need to hear the motion at this time and the proper procedures for hearing such a motion in both adjudications. Mr. Caster states that the federal claims should be heard first. Mr. Weldon states that these potential reserved water right claims that could be substantial cannot be ignored.

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Joe Sparks and Janet Ronald address the Court regarding the pending motions of the San Carlos Apache Tribe re: the Department's implementation of statutes and full appropriation of the Gila River system. Mr. Sparks states that the United States Supreme Court's opinion in *Arizona v. California* supports the full appropriation motion, and the Court should set a briefing schedule for both motions.

11:10 a.m. Court stands at recess.

11:30 a.m. Court reconvenes with all present.

Court Reporter, Steve King, is present.

The pending application to approve the settlement agreement between the Roosevelt Water Conservation District and the Gila River Indian Community is discussed with comments from Bill Staudenmaier, John Weldon, Bill Anger, Joe Sparks, and Rodney Lewis. Mr. Staudenmaier states that the District and the Community are ready to proceed with the application. Mr. Weldon states that this agreement does not have to be ratified by Congress. Mr. Anger states that the Cities he represents believe that this agreement adversely affects them. Mr. Sparks states that the agreement has not been served on other parties. Mr. Lewis states that the Community wants this agreement to be approved by the Court, but this matter may be heard next year.

Joe Sparks, John Weldon, Graham Clark, and Jim Callahan discuss the pending motions of the San Carlos Apache Tribe. Mr. Sparks states that the motions can be heard as filed. Mr. Weldon states that the Salt River Project supports the full appropriation motion. Mr. Callahan states that this Court may not be the best forum to hear this issue and there may be a question as to the Court's jurisdiction over the Department, which is not a party in the adjudication. Mr. Clark explains when overappropriation may exist.

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David Brown, Patrick Barry and Steve Wene address the Court regarding the St. David Irrigation District and Pomerene Water Users' Association cases and the need for a subflow methodology. Mr. Brown states that the rights of these water users should be determined after an amended San Pedro River Watershed HSR is prepared, and these claims should be addressed later. Mr. Barry states that a subflow methodology is needed before proceeding to determine these claims.

Lee Leininger informs the Court that the Coronado National Memorial contested case has probably been settled.

Lee Leininger and Janet Ronald address the Court re: Tonto National Monument, which is part of the National Park Service. The United States and the Department of Water Resources are discussing how to proceed regarding a possible resolution of the United States' water right claim and the Department's preparation of a technical report.

David Brown and Joe Sparks discuss the San Carlos Apache Reservation HSR and the priorities the Court should assign to the adjudication of Indian and non-Indian claims.

12:15 p.m. Hearing concludes.

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A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3, W-4 mailing list dated December 10, 2002 (as modified).