

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/08/2011

CLERK OF THE COURT
FORM V000

SPECIAL MASTER GEORGE A. SCHADE, JR.

J.Rutledge
Deputy

FILED: 12/14/2011

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

In Re Fort Huachuca

CIVIL NO: W1-11-605

In Re Telephonic Status Conference Regarding
Issues Recommended by the Litigants for
Consideration in the Next Phase of This Case

MINUTE ENTRY

9:32 a.m. In chambers. This is the time set for a Telephonic Conference pursuant to the Special Master's Order of November 18, 2011 for the purpose of discussing issues recommended by the litigants for consideration in the next phase of this case. Appearing telephonically are: Lisa M. McKnight and John B. Weldon Jr., on behalf of Salt River Project; Joe P. Sparks on behalf of San Carlos Apache Tribe and Tonto Apache Tribe; Janet L. Ronald on behalf of Arizona Department of Water Resources ("ADWR"); Susan B. Montgomery on behalf of the Yavapai-Apache Nation; Charles L. Cahoy on behalf of the City of Tempe; Cynthia S. Campbell on behalf of the City of Phoenix; William H. Anger on behalf of the Cities of Chandler, Glendale, Mesa, and Scottsdale; David A. Brown on behalf of St. David Irrigation District; William P. Sullivan on behalf of Bella Vista Water Co., Inc., Pueblo Del Sol Water Company, and the City of Sierra Vista; William L. Staudenmaier and Shilpa Hunter-Patel on behalf of Freeport McMoRan Corporation; Steven L. Wene on behalf of the City of Safford; Tony Gioia from Camp Verde; Lauren J. Caster and Gregory J. Adams on behalf of ASARCO LLC; Stephen C. Cann on behalf of The Nature Conservancy; Dan Haws on behalf of Fort Huachuca and Mark Holycross on behalf of the Department of the Army. Present in chambers are Special Master, George A. Schade, Jr., and assistant Barbara K. Brown.

Court reporter, Carrie Newman, is present.

Mr. Holycross notes that R. Lee Leininger is not on the line yet and requests permission of the Special Master to contact Mr. Leininger so as to bring him into the conference call.

After waiting several minutes and hearing no response from either Mr. Holycross or Mr. Leininger, the Special Master proceeds with this conference call, Mr. Haws having waived their appearance until such time as they appear.

The Special Master, having read and reviewed the joint recommendations of one group of parties, suggests briefing the first issue and setting an evidentiary hearing on the other two issues, but inquires into how the parties would like to proceed in this matter.

9:43 a.m. Let the record reflect that R. Lee Leininger, appearing on behalf of the U.S. Department of Justice, Environment and Natural Resources Division joins the conference.

Mr. Leininger states that he would like this matter to proceed to an evidentiary hearing as soon as possible so that a determination can be made on the water rights.

Mr. Staudenmaier suggests that all three issues should go through the process of disclosure and discovery and that any issues remaining could then be set for an evidentiary hearing.

Ms. McKnight and Mr. Caster agree with Mr. Staudenmaier's suggestion.

Mr. Leininger does not object to Mr. Staudenmaier's proposal but would still like to set a trial date in this matter to keep things moving along.

The Special Master asks the parties about whether ADWR's involvement in investigating this matter should be conducted at this time or at a later point.

Mr. Staudenmaier states his opinion that ADWR should be involved in this process right now.

The Special Master discusses Freeport McMoRan's two subsidiary issues and notes that Judge Ballinger is currently dealing with issue A and therefore the Special Master is reluctant to get involved with issue A (the Subflow Zone Map) until the Court issues a ruling on the matter.

Mr. Staudenmaier agrees that the Subflow Zone will need to be established to determine what is and is not subflow and believes that the current issues before the Court are necessary to decide if the Fort has a reserved right to groundwater.

Ms. McKnight agrees with the Special Master that Judge Ballinger is currently in the process of addressing issue A. Further, she believes that discovery is very important in this case and that the parties should proceed to brief the three suggested issues.

Mr. Leininger concurs with Ms. McKnight. Further, he believes that it is not necessary to wait for a report from ADWR regarding the Federal reservation of water rights. He believes ADWR has a limited role in this matter and does not need to find out the amount of appropriable water available.

Mr. Staudenmaier disagrees with Mr. Leininger, believing that it is necessary for a determination to be made about how much appropriable water is available. Further, he believes that the parties must address the issue of whether and to what extent the Fort has a right to groundwater.

Mr. Leininger states that all the information about ADWR's previous findings on the reserved water right of the Fort would be made available during discovery and that it would be unfruitful and unnecessary to have ADWR proceed with an additional determination regarding other sources.

The Special Master asks the parties whether ADWR should be directed to start doing certain technical investigations now or if this should be handled after disclosure and discovery are completed.

Mr. Leininger states that the directives to ADWR should be made after discovery, since the issues will be better defined during the discovery process.

Mr. Caster states that it would be prudent to have ADWR start after discovery so that it will have whatever information may come through disclosure and discovery.

Ms. McKnight agrees with Mr. Caster and believes that ADWR would benefit from the information that will be disclosed during discovery.

Mr. Staudenmaier agrees with Mr. Caster and Ms. McKnight but differs on what ADWR should be tasked to do.

The Special Master proposes to have the parties conduct disclosures and discovery on the three issues and then set a briefing schedule for Motions.

Mr. Caster states his agreement with this proposal.

The Special Master asks the parties whether a timeline should be set for Motions, Responses and Replies.

Mr. Leininger asks for clarification as to what type of Motions are being referred to.

The Special Master states that he is referring to Motions for Summary Judgment.

Mr. Caster states that the parties won't know what Motions to file until they see what evidence comes out during disclosures and discovery. Thus, he believes it would be

prudent to wait to set a schedule until close to the end of the disclosure and discovery deadline at which time the Special Master could set a telephonic status conference to discuss scheduling.

In considering the positions of counsel, the Special Master states that he will define the issues, provide for disclosure and discovery deadlines, and then set a conference.

Mr. Sullivan believes it is prudent to go ahead with disclosures and discovery and then determine what ADWR's role should be.

Mr. Sparks agrees with Mr. Sullivan. Further, he believes that ADWR is in possession of information regarding the San Pedro River and the Fort, and that the information should be provided to the parties in order to reduce disclosure requests.

The Special Master states that this information should be public records and therefore available to anyone. Mr. Sparks argues that ADWR could at least assemble the information in a way that would assist the parties in obtaining it with ease.

The Special Master asks the parties whether ADWR should prepare a report with that information right now or if the parties should obtain the information on their own.

Mr. Sparks believes that it would be a conservation of resources to have ADWR prepare a report for submission to the parties rather than receiving requests from each party involved.

The Special Master seeks Ms. Ronald's opinion in this matter.

Ms. Ronald believes that the current discovery process set up by ADWR is useful and is concerned about adding another additional process by which the already available information is given to the parties.

Mr. Leininger agrees with Ms. Ronald that there is a process of discovery already set up that works. However, he asks for at least 90 days to complete the process.

The Special Master states that he will set a schedule for disclosures and deadlines for sometime in April of 2012.

Mr. Caster believes the April timeframe for initial disclosures is acceptable. Further, he proposes that the U.S. provide their disclosures first since they have the most information for the basis of their claim. Then other parties' disclosures could follow either 30 or 60 days after.

Mr. Leininger adds that he believes the process will be streamlined if there is an initial disclosure phase followed by a discovery phase.

The Special Master asks him how much time he suggests for discovery.

Mr. Leininger suggests a discovery period of 4 to 6 months.

The Special Master states that he is leaning toward 4 month option, with a conference being set at the beginning of 2013. The Special Master inquires from the parties if four months would be sufficient for discovery.

Mr. Sullivan believes four months is ambitious and hopes the Special Master would consider requests for extensions of time.

The Special Master will consider a time frame of 4 to 6 months. Of course, the parties may file a motion for additional time if necessary.

The Special Master asks the parties whether he should appoint a contested case steering committee or a settlement committee.

Mr. Caster does not believe there is a need to appoint a committee. Mr. Leininger concurs.

In light of the foregoing, the Special Master will not appoint either committee at this time.

Ms. McKnight asks if specific dates for deadlines will be set.

The Special Master states that he will give specific dates for deadlines and that he will direct the U.S. to disclose their information first. He will then provide 60 days for disclosures from other parties. Finally, he will give a specific date for conclusion of formal discovery, as well as a specific date for a conference.

Mr. Sullivan proposes that it may be appropriate to set a date by which time a party must state their intent to participate actively in this matter.

The Special Master states that this could be done before the disclosure deadline. Mr. Sullivan agrees.

The Special Master advises the parties that he had been considering providing a deadline for Motions to Intervene.

Mr. Caster believes parties should intervene if they want to participate rather than just file an amicus brief.

The Special Master will continue the process of allowing amicus briefs. However, parties who have previously filed Objections will be considered litigants.

Mr. Anger inquires if the Special Master will still allow amici.

The Special Master indicates that he will still allow it, but that parties shall identify themselves as amici.

Mr. Sullivan states that amici are limited by the issues raised by the litigants and they must intervene if they want to raise additional issues.

The Special Master raises the issues of priorities since it was mentioned in the joint statement of recommended issues.

Mr. Caster believes that the issue of the priority remains unresolved based on Judge Ballinger's ruling dated September 7, 2011.

Mr. Leininger believes that in the future they may need to seek clarification from the Court with regard to Judge Ballinger's order on that particular matter. However, it is not to be one of the three issues that are currently the subject of discovery in this matter.

Ms. McKnight does not agree with Mr. Caster's opinion on the Judge's Order. She agrees with Mr. Leininger that the Court would have to make that clarification.

Mr. Leininger states that for discovery purposes the parties should be limited to the three issues the parties agreed to.

The Special Master states that in his April 4, 2008 report he recommended specific dates of priority for the Fort's reserved water rights, and his comments in the discussion related to Conclusion of Law No. 21 were intended to assist the Court if the Court had chosen to explore the issue further.

The Special Master will allow Mr. Caster to file a Motion with the Court or the Special Master on issues of priorities at a later time.

The Special Master advises the parties that he will consider all the information presented at today's conference and an Order will be entered before the end of the year.

10:05 a.m. Matter concludes.

A copy of this order is mailed to all parties on the Court approved mailing list for W1-11-605 dated July 25, 2011.