

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/11/2017

CLERK OF THE COURT
Form V000

SPECIAL WATER MASTER SUSAN HARRIS

L. Stogsdill
Deputy

Contested Case No. W1-103

FILED: 10/23/17

W1-103

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

In re: San Pedro River Subflow Technical Report

Pretrial Conference on the Cone of Depression Test Methodology

MINUTE ENTRY

Courtroom CCB - 301

1:30 p.m. This is the time set for a status conference before Special Water Master Susan Harris to discuss the Cone of Depression Test Methodology and further scheduling of this matter.

The following attorneys appear telephonically: Cynthia J. Haglin on behalf of the City of Chandler; Susan B. Montgomery on behalf of the Pascua Yaqui Tribe and Yavapai-Apache Nation; Thomas L. Murphy on behalf of the Gila Indian River Community; Yousef Negose on behalf of the United States Department of Justice; William P. Sullivan on behalf of Arlington Canal Company, Bella Vista Water Company, Inc., Pueblo Del Sol Water Company; Cortaro-Marana Irrigation District; Cortaro Water

Users' Association; Doney Park Water, Town of Gilbert, Valencia Water Company, Inc., and City of Sierra Vista and Megan Tracy on behalf of BHP Copper.

The following attorneys appear in-person: William H. Anger on behalf of the Cities of Avondale, Chandler, Glendale, Mesa and Scottsdale; F. Patrick Barry on behalf of the United States Department of Justice; Monique Coady on behalf of the City of Phoenix; Jeffrey R. Heilman, Mark A. McGinnis, John B. Weldon, Jr. and Patrick Sigl on behalf of the Salt River Project; Sean T. Hood and Brad Pew on behalf of Freeport Minerals Corporation; L. William Staudenmaier on behalf of the Arizona Public Service; Janet L. Miller and Kimberly R. Parks on behalf of the Arizona Department of Water Resources; Edwin W. Slade, III on behalf of the Arizona State Land Department; and Joe P. Sparks on behalf of the San Carlos Apache Tribe and Tonto Apache Tribe.

Court reporter Helene Beatty is present and a record of the proceedings is also made digitally.

Discussion is held regarding the status of discovery.

Mark McGinnis on behalf of SRP addresses the court regarding a previous ruling by Judge Ballinger Jr. and a proposed deadline for Motions in Limine. Counsel suggests a briefing scheduling regarding the same. Sean Hood on behalf of Freeport Minerals Corporation also addresses the court with regard to the completion of depositions and potential scheduling for Motions in Limine. Edwin Slade, III on behalf of the Arizona State Land Department, suggests a deadline for Motions in Limine be set after depositions are completed.

Discussion is held regarding a deadline for Supplemental Rule 26.1 Disclosure Statements. Sean Hood also addresses the court on that issue.

Discussion is also held regarding a deadline for a Joint Pre-Trial Statement. Counsel agrees that a Joint Pre-Trial Statement is not necessary in this matter due to the technical nature of the issues.

For the reasons stated on the record,

IT IS ORDERED that a Joint Pre-Trial Statement shall not be filed. A final witness and exhibit list shall be filed by **February 21, 2018**. The exhibits shall be provided to the Clerk of the Court for marking and will be on an electronic thumb drive with an exhibit worksheet included (similar to the attached worksheet.) The exhibits shall be delivered to the Office of the Special Water Master, Central Court Building, Room 301.

IT IS FURTHER ORDERED that a trial readiness conference will be scheduled on **March 1, 2018** (at a time to be determined), if deemed necessary.

The court inquires if the parties stipulate to the admission of expert witness reports in evidence. Counsel agrees with the stipulation with the exception of Joe Sparks, who voices his objection. Mr. McGinnis offers a suggestion as to how to handle portions of a report which may be subject to a Motion in Limine. No other counsel voices an objection.

Expert testimony is discussed by Sean Hood, who advises the court that direct/cross examination of the expert is preferable to relying on the expert's reports. Mark McGinnis is in agreement with that proposal although he would prefer an affidavit in lieu of direct examination. No other counsel voices an objection.

The length and location of the trial is discussed. Sean Hood advises the court that 8 trial days may be needed, possibly less. Thomas Murphy advises the court that with the number of witnesses, 4 days should be sufficient.

Discussion is held regarding the Special Master issuing a draft report pursuant to Rule 53(f) and that counsel's time to respond to such a report would be very short. The matter will be addressed further at the trial readiness conference.

Mark McGinnis further advises the court regarding a couple of issues relative to expert rebuttal reports that arose in another trial. Mr. McGinnis suggests a deadline for rebuttal expert reports be prior to their depositions being taken. Sean Hood and Joe Sparks also address the court on this issue.

IT IS FURTHER ORDERED taking the matter under advisement.

2:16 p.m. Matter concludes.

LATER:

IT IS FURTHER ORDERED that:

1. Motions in Limine shall be filed no later than February 7, 2018. Responses shall be filed in compliance with Rule 7.1(a) Ariz. R Civ. P.
2. The parties shall not be required to file expert rebuttal reports.
3. A Readiness Conference shall be held on March 1, 2018, at 1:30 p.m. in Maricopa County Superior Court, Courtroom 301, Central Court Building, 201 West Jefferson, Phoenix, Arizona 85003.
4. Trial will begin at 10:30 a.m. on March 5, 2018, in Maricopa County Superior Court, Courtroom 309 in the Old Courthouse, 125 West Washington, Phoenix, Arizona 85003. Trial will be held each day from 10:30 a.m. to 5:00 p.m. on March 5-9, 2018 and March 12, 2018.

Instructions for telephonic participation in the readiness conference:

Dial: 602-506-9695 (local)

1-855-506-9695 (toll free long distance)

Dial Participant Pass Code 357264#

A copy of this order is mailed to all persons listed on the Court approved mailing list for Contested Case Number W1-103 dated August 24, 2017.

Exhibit Worksheet

| | | | | |
|---|-----------------------|-------------------------------------|-----------------------------------|---|
| | | | | |
| Case No: W1-11-605 | | | | |
| | | Trial Date: | October 3, 2016 | 10-12-16 printed for counsel and Judge |
| Identifying Parties: | | | | |
| Claimant 1 - United States (CL1_US) | | | | |
| Claimant 2 - Salt River Project (CL2_SRP) | | | | |
| Claimant 3 - Freeport Minerals Corporation (CL3_Freeport) | | | | |
| Claimant 4 - State of Arizona (CL4_State) | | | | |
| | | | | |
| <u>Exhibit No</u> | <u>Offered</u> | <u>Date Rec. in Evidence</u> | <u>File Name for E-Exh</u> | <u>Description</u> |
| 1 | CL-1 | 10/12/2016 | CL1_US_1.pdf | Declaration of Major General Robert Ashley, May 20, 2015 |
| 2 | CL-2 | 10/10/2016 | CL1_US_2.pdf | Slides, Post Overview Brief, 2015 |
| 3 | | | CL1_US_3.pdf | Slides, USAICoE Resident Training Population History |
| 4 | CL-1 | 10/12/2016 | CL1_US_4.pdf | TRADOC Pam 525-3-0, The U.S. Army Capstone Concept, 19 Dec 2012 |
| 5 | CL-1 | 10/12/2016 | CL1_US_5.pdf | Quadrennial Defense Review, 2014 |
| 6 | CL-1 | 10/12/2016 | CL1_US_6.pdf | National Military Strategy of the United States of America, 2015 |
| 7 | | | CL1_US_7.pdf | National Security Strategy, 2015 |
| 8 | CL-1 | 10/12/2016 | CL1_US_8.pdf | 2017 Defense Posture Statement: Taking the Long View, Investing for the Future, Secretary of Defense Ash Carter, February 2016 |
| 9 | CL-1 | 10/10/2016 | CL1_US_9.pdf | BRAC 2005 Report, Appendix C, Closure and Realignment Impacts by State |
| 10 | CL-1 | 10/10/2016 | CL1_US_10.pdf | BRAC 2005 Report |
| 11 | | | CL1_US_11.pdf | DoD Memo 2005 BRAC |
| 12 | | | CL1_US_12.pdf | Declaration of Colonel Thomas Boone, 11 Jul 2016 |
| 13 | | | CL1_US_13.pdf | Supplemental Declaration of Colonel Thomas Boone, July 29, 2016 |
| 14 | CL-1 | 10/10/2016 | CL1_US_14.pdf | Ft. Huachuca Hunting Information, Regulations, and Guidelines |
| 15 | | | CL1_US_15.pdf | Master Planning Technical Manual |
| 16 | CL-1 | 10/5/2016 | CL1_US_16.pdf | Fort Huachuca Real Property Master Plan Update (Redacted), December 2007 |
| 17 | | | CL1_US_17.pdf | Future Development Master Plan, Fort Huachuca, AZ, Master Plan Narrative, Prepared for Corps of Engineers by Hermann Zillgens Associates, October 1991 |
| 18 | | | CL1_US_18.pdf | RB Supporting Docs related to Fort Huachuca |
| 19 | | | CL1_US_19.pdf | Figure, <i>Fort Huachuca On-Post and Effective Populations since 1978</i> , Plateau Resources LLC, April 2016 |
| 20 | | | CL1_US_20.pdf | <i>Evaluation of Water Needs and Sources at Fort Huachuca, In re Fort Huachuca (Contested Case No. W1-11-605)</i> , Plateau Resources LLC, October 2015. |
| 21 | | | CL1_US_21.pdf | <i>Fort Huachuca Water Resources Report</i> , Joel Degner, May 2015 |
| 22 | | | CL1_US_22.pdf | <i>Plateau Resources Review - Rough Draft Notes</i> , Joel Degner |
| 23 | | | CL1_US_23.pdf | Fort Huachuca Water Resources Report, Addendum, Joel Degner, May 2016 |
| 24 | | | CL1_US_24.pdf | Declaration of Joel Degner, July 11, 2016 |
| 25 | | | CL1_US_25.pdf | <i>Fort Huachuca Water Resources Report, Second Addendum</i> , Joel Degner, July 2016 |
| 26 | | | CL1_US_26.pdf | <i>Unmetered Residential and Non-Residential Well Use in the Sierra Vista Subwatershed, Arizona</i> , October 2013, Plateau Resources, LLC |
| 27 | CL-3 | 10/17/2016 | CL1_US_27.pdf | Brown, S.G., Davidson, E.S., Kister, L.R., and B.W. Thomsen 1966. <i>Water Resources, Fort Huachuca Military Reservation, Southwestern Arizona. US Geological Survey Water-Supply Paper 1819-D.</i> |