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Clerk of the Court

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

File
Re: FEB 26 2003

OFFICE OF THE
SPECIAL MASTER
ARIZONA GENERAL STREAM ADJUDICATION

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

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

The Court has considered the positions expressed at the January 22, 2003, hearing in this proceeding and the materials filed by the parties.

**Referral of Subflow Technical Report
to the Special Master**

The Court agrees with the position of the Gila Steering Committee members that it is important to consider and resolve issues relating to the Arizona Department of Water Resources' ("ADWR") Subflow Technical Report, San Pedro River Watershed (the "Subflow Report"). Accordingly,

IT IS ORDERED, referring the consideration of the responses and objections filed to the Subflow Report to the Special Master. After reviewing the matter and holding such hearings as he deems necessary, the Special Master shall prepare a report to the Court setting forth his recommendations as to whether the Subflow Report should be adopted in whole or in part or modified.

**Implementation of the *De Minimis* Order
In the San Pedro River Watershed**

A number of the parties requested that ADWR be directed to adopt procedures for implementing the Court's ruling regarding *de minimis* claims in the San Pedro River Watershed. The Court believes that identifying specific *de minimis* claims is best addressed as part of other tasks undertaken by ADWR. For this reason,

IT IS FURTHER ORDERED, that ADWR shall apply the standards announced in the Court's September 26, 2002, ruling to identify those claims it concludes are *de minimis* as part

of its work in preparing and supplementing Hydrographic Survey Reports ("HSRs") or rendering other technical assistance to the Court in this adjudication.

**Application For Special Proceedings To Approve
An Indian Water Rights Settlement Stipulation**

The Roosevelt Water Conservation District ("RWCD") asked the Court to schedule consideration of its application for an order for special proceedings for approval of its settlement agreement with the Gila River Indian Community ("GRIC") and the United States. The Court does not believe it is appropriate to consider this application at this time. For this reason,

IT IS FURTHER ORDERED, denying RWCD's request, without prejudice to it being renewed on or after June 1, 2004.

Schedule for ADWR's Technical Work

The Court has determined the relative priority ADWR should give to the various projects it has been directed to undertake both in this proceeding and in the Little Colorado River Adjudication.

IT IS FURTHER ORDERED, that ADWR shall give priority to the following projects in the order listed below:

1. Completion of the subflow determinations, cone of depression tests, and determination of *de minimis* water rights in the San Pedro River Watershed.
2. Work related to the Fort Huachuca contested case in the Gila River Adjudication.
3. The Hopi Tribe HSR in the Little Colorado River Adjudication.
4. Completion of work needed to resolve the Show Low Lake contested case in the Little Colorado River Adjudication.
5. Work related to the PWR 107 contested case in the Gila River Adjudication.

Work by ADWR on the Gila River Indian Reservation HSR,* San Carlos Apache Reservation HSR, Fort Apache Indian Reservation HSR, Verde River Watershed HSR, and matters relating to the St. David Irrigation District and Pomerene Water Users' Association contested cases shall await completion of the matters set forth above absent further order from the Court.

Should ADWR find that it has capacity to undertake other technical work in addition to that described above, it shall notify the Court and will receive an order providing additional guidance.

This Order does not direct ADWR to now undertake tasks only on one project at a time in the sequence set forth above. It may well be that certain circumstances justify performing work other than in strict compliance with the listed priorities. For example, the Court does not intend for ADWR to halt work and await resolution of objections to its Subflow Report. The priority scheme set forth here is a general guideline.

Briefing and Hearing of Legal Issues and Motions

Various parties have asked the Court to set briefing schedules and hearing so that a number of legal issues can be resolved. The Court finds:

1. The United States' request to designate as an issue of broad legal importance whether parties that do not claim a right to appropriable water are properly joined and have standing to object to parties claiming water rights based on state or federal law should be addressed as part of the consideration of individual contested cases.

2. While it may be appropriate to address the issue raised by the State of Arizona of whether federal reserved water rights exist for State Trust Lands, other pending

* At the January 22, 2003, hearing, counsel for GRIC agreed with the Court that current circumstances dictate that the Court not grant GRIC's request to Prioritize ADWR's HSR for the Gila River Indian Reservation.

matters need to be addressed before the Court or the Special Master considers this issue.

3. During the January 22, 2003, hearing, counsel for the San Carlos Apache Tribe avowed that the Tribe's Motion for Partial Summary Judgment for Declaration of Full Appropriation in the Gila River Stream Adjudication deals with binding factual findings accepted by the United States Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963). Based upon this avowal, the Court believes this motion should be set for briefing and a hearing.

4. The San Carlos Apache Tribe also filed a Motion for Order Directing ADWR to Implement A.R.S. §§ 45-112, 45-203 *et seq.*, 45-189 *et seq.*, and 45-1202 *et seq.* In light of the statements made by ADWR at the hearing, the San Carlos Apache Tribe needs to indicate what portion of this motion, if any, it wishes the Court to consider.

5. At the hearing, the consensus of the parties was that Pre-Trial Order No. 1 (dated May 29, 1986) should be amended to evidence that the priorities for production of HSRs in this adjudication have changed to the extent that the Verde River Watershed HSR should be considered immediately upon completion of the San Pedro River Watershed HSR.

In light of the foregoing findings,

IT IS FURTHER ORDERED,

A. The United States' request to determine as an issue of broad legal importance the standing of certain claimants and non-claimants in this adjudication is denied.

B. The Court shall consider whether to set a briefing schedule and oral argument on the State of Arizona's Motion for Partial Summary Judgment Establishing the Existence of Federal Reserved Water Rights for State Trust Lands at the first general hearing held in this adjudication during 2004.

C. With respect to its pending motions described above, counsel for the San Carlos Apache Tribe is directed to file, on or before **March 28, 2003**, either amendments to each motion or a statement that the motions are withdrawn.

D. All responses in opposition to, or in support of, the San Carlos Apache Tribe's pending or amended motions shall be

filed and served on or before **May 2, 2003**. Any reply to the filed responses shall be filed and served on or before **May 27, 2003**. Materials filed shall be served on each party listed on the Court-approved mailing list and any other person or entity requesting service in writing. Upon receipt of the materials relating to the motion, the Court will determine if oral argument is needed and set a hearing date if appropriate.

E. Paragraph 12.B(4) of Pre-Trial Order No. 1 regarding conduct of this adjudication is amended to provide that completion of the Verde River Watershed HSR shall have second priority in the production of HSRs.

**Submissions of GRIC and the United States of Land
and Water Use Planning Information for the
Gila River Indian Reservation HSR**

To insure compliance with the decision of the Arizona Supreme Court in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001), the Court previously ordered the Gila River Indian Community and the United States to file information and supporting documentation relating to their current and future land and water use planning within the area affected by the Gila River Indian Reservation HSR that would give rise to or support claims made in this adjudication. The United States requested that the Court permit the parties to file portions of these materials (consisting of supporting documentation) under seal.

IT IS FURTHER ORDERED, granting the United States' request that materials supporting the land and water use planning disclosure that are to be filed with ADWR may be filed under seal. A log identifying and describing each item filed under seal in sufficient detail to allow any claimant to identify the author of each document, its general nature, and the basis for it being subject to seal shall be submitted to ADWR and available for inspection by the parties.

IT IS FURTHER ORDERED, denying in all other respects GRIC's Motion to Prioritize ADWR's HSR for the Gila River Indian Reservation.

Tonto National Monument

The Court finds that for various reasons, including the level of resources currently available to ADWR in this adjudication, the Court should not direct expedited preparation of an HSR for the Tonto National Monument. The Court encourages the United States to continue its efforts to resolve its claims. Accordingly,

IT IS FURTHER ORDERED, the United States' request for an order directing expedited preparation of an HSR relating to the Tonto National Monument is denied.

Gila Steering Committee

The Court finds that the composition of the Gila Steering Committee should be reviewed and modified in accordance with Pre-Trial Order No. 1,** and notice of meetings of the committee should be given sufficiently in advance of the meeting date to permit any interested party or claimant to attend. Paragraph 9.B of Pre-Trial Order No. 1 provides that ADWR "shall file a notice of each steering committee meeting with the Court and shall mail a copy of the notice to each member of the committee. Notice of the committee meetings shall be given to all parties in the same manner as notice must be given of other documents filed in this action..."

Based on the foregoing findings,

IT IS FURTHER ORDERED,

A. The Gila Steering Committee shall continue to operate in accordance with the directives set forth in Pre-Trial Order No. 1, including the procedures for notices of meetings set forth in ¶ 9.B.

B. Any party who in the future wishes to be appointed to the Gila Steering Committee shall file a written request with the Court. The Chair of the Steering Committee shall advise

** For example, Mr. Alfred S. Cox, currently a listed member of the Steering Committee, no longer represents GRIC. However, his law firm may still represent Silas Kisto. In addition, during the most recent hearing, GRIC's counsel expressed GRIC's interest in having a representative on the committee.

the Court of the resignation or recommended replacement of any member of the committee. The Court expects that all committee members will productively participate in the committee's work and thanks the members for their participation.

C. Mr. Alfred S. Cox is removed, effective March 28, 2003, from the Steering Committee unless the Court receives on or before **March 28, 2003**, his written request to remain a member of the Gila Steering Committee.

D. The Court appoints Mr. Rodney B. Lewis or his designee to the Gila Steering Committee as a representative of GRIC.

Report from ADWR On Service of New Use Summonses

At the January 22, 2003, hearing, ADWR provided information concerning the new use summonses recently served in this adjudication. The Court would like to have a report from ADWR describing more fully the results of this service of process. Therefore,

IT IS FURTHER ORDERED that ADWR shall file on or before **May 30, 2003**, a report describing the numbers of new use summonses mailed, served, not served, reasons for lack of service, and new use claims filed since ADWR began the latest service of new use summonses. The Court wishes to know how the service of process could be more efficient and less costly, and ADWR's plans for future service of new use summonses.

The Court-Approved Mailing List

The Arizona Supreme Court approved the use of the Court-approved mailing list for service of pleadings. It is important that the list remains current, and all appropriate changes are timely made. For this reason,

IT IS FURTHER ORDERED, all persons who wish to be included or remain listed on the Court-approved mailing list shall so notify the office of the Special Master in writing on or before **March 28, 2003**. A copy of the request does not need to be sent to the other persons on the mailing list. The Special Master will prepare a revised mailing list and shall

notify all parties on the current mailing list of the revisions.

**Notice of Anticipated Visit to
the Director of ADWR**

The Court believes a courtesy visit to Mr. Herb Guenther, ADWR's new Director, would be appropriate. Although a visit has not been set, this order serves as notice that a visit may be arranged in the near future. The Court will provide further notice when arrangements are known.



FEB 20 2003

The Honorable Eddward P. Ballinger, Jr.
Judge of the Superior Court

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