



Arizona General Stream Adjudication Bulletin

OFFICE OF THE SPECIAL MASTER • March - April 1999

Proposed San Carlos Settlement

The thaw in the Gila River adjudication continued rapidly with several significant announcements and developments during the last week of March. Most importantly, Secretary of Interior Bruce Babbitt signed the San Carlos Apache Tribe Water Rights Settlement at a public ceremony in Phoenix on March 30. The proposed settlement contemplates both water and money for the 1.9 million acre reservation straddling both the Salt River and Gila River east of Globe. The settlement will not be finalized until approved by the Gila River adjudication court.

Behind the scenes, attorneys for the many settling parties were busy preparing an application and lengthy supporting materials requesting that Judge Susan R. Bolton approve the settlement as part of the Gila River

general stream adjudication. The 1992 federal statute authorizing the settlement requires that, to be effective, the settlement must be approved by the adjudication court no later than December 31, 1999.

The United States and the San Carlos Apache Tribe have been joined by other parties in reaching the settlement including the Arizona Game & Fish Comm'n, Arizona State Land Dep't, Salt River Project, Buckeye Irrigation Co., Buckeye Water Conservation & Drainage Dist., City of Tempe, and Roosevelt Water Conservation Dist.

Basic Provisions

The 1992 federal law provided the framework for the settlement, but numerous issues and details have been addressed and resolved during the ensuing years. Under

the proposed settlement, the San Carlos Apache Tribe would be awarded the following water rights:

- On reservation diversion and use of 7,300 acre-feet/yr of surface water from the Black River and the Salt River (below its confluence with the Black River) with a priority date of Nov. 9, 1871. The Tribe reserves the right to assert an earlier priority date against non-settling parties.
- On reservation diversion and use of all surface water from all tributaries within the reservation that flow into the main stem of the San Pedro River, Black River, and Salt River (below its confluence with the Black River).

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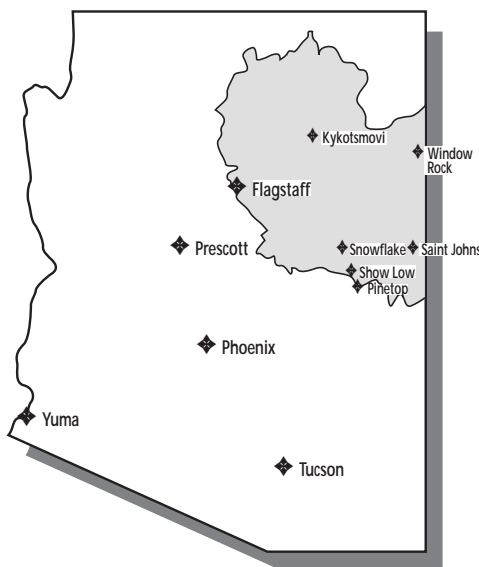
Special Action at End?

The last word may have been uttered in the special action concerning adjudication legislation passed by the 1995 state legislature (*San Carlos Apache Tribe v. Superior Court*, No. CV-95-0161-SA). The San Carlos Apache Tribe prevailed on many of its arguments that the legislation was flawed, and the Tribe

requested attorneys fees and costs for its efforts. This request was denied by the Arizona Supreme Court on Feb. 2, 1999 (see Feb. 1999 *Bulletin* at p. 1), and the Tribe asked the court to reconsider its view. On March 3, 1999, the supreme court again denied the fee and cost request. ♠

The 1998-99 Bulletin Index is included with this issue. This index covers all articles from April 1998 to Feb. 1999.

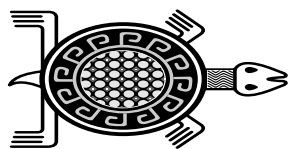
Little Colorado River Proceedings



Hearing Upcoming

The parties seeking a major settlement in the Little Colorado River Adjudication redoubled their efforts as the first hearing with the new presiding judge approaches. Early in the year, Judge Edward L. Dawson of Gila County was assigned to the case by the Arizona Supreme Court (*see* Feb. 1999 *Bulletin* at p. 1). He has scheduled a status conference with the parties at 9:30 a.m. on Thursday, April 22, 1999, in St. Johns.

The negotiating parties are required to submit a written status report to Judge Dawson in advance of the hearing. In an effort to bring the settlement discussions to completion, Settlement Judge Michael Nelson met with some or all of the parties on three occasions during January, four occasions during March, and once in early April



United States, DWR Disagree

At the last status conference, the attorney for the National Park Service (NPS) indicated that his client was close to settlement with other parties in the adjudication. The settlement would be premised on some recognition that the NPS claims are based on the federal reserved water rights doctrine. An attorney for the Arizona Department of Water Resources (DWR) indicated that DWR is not convinced of the legal foundation for these claims and could not yet support the settlement. The court ordered NPS and DWR to discuss their disagreement and file a joint report before the next hearing (now scheduled for April 22, *see* above).

In a pleading dated March 26, 1999, the attorney for the NPS requests that the requirement of a joint report be vacated. He indicates that his client and DWR have failed to come to agreement and, in any case, it is beyond DWR's statutory authority "to advance legal and policy arguments regarding the merits and precedential impacts of the reserved water right claims of the United States" Responding pleadings have not yet been filed.

In re Atkinson's Ltd. of Az. DBA Cameron Trading Post, No. 6417-34-1

The Special Master conducted a telephonic pretrial conference with the attorneys for Cameron Trading Post, the Navajo Nation, and the United States on March 2, 1999 (*see* Feb. 1999 *Bulletin* at p. 2). The United States indicated that it desired to intervene in the case, and the Master issued a schedule for the motion to intervene and a response.

These pleadings were all submitted as of April 5, 1999.

The Master also ordered that the Navajo Nation's motion to dismiss (and that of the United States, if allowed to intervene) be filed by May 14, 1999. Cameron's response is due on June 14, and the moving parties' final reply is due on July 1, 1999. ♠

Arizona General Stream Adjudication Bulletin is published by the Office of the Special Master. Subscriptions are available for \$12 annually and a subscription form is located on the last page. Some previous issues and subscription information is available on our web page : <http://www.supreme.state.az.us/wm>

The information contained in this Bulletin is provided for informational and scheduling purposes only, and does not constitute a legal opinion by the Special Master on matters contained herein.

Volume 7
Number 2

John E. Thorson, Special Master

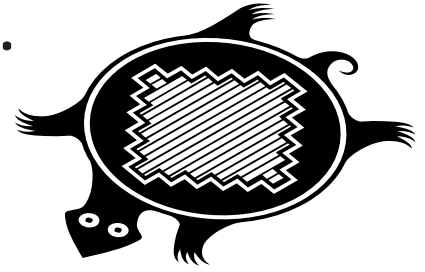
Kathy Dolge, Assistant to
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Design/Production: Elizabeth Hepford

San Carlos Settlement cont'd ...



continued from page 1...

- On reservation diversion and use of all surface water from all tributaries within the reservation that flow into the main stem of the Gila River.
- All groundwater beneath the reservation, so long as it is regulated by a groundwater management plan required by the federal statute.
- Right to all effluent developed on reservation.

These sources of water can be used for any beneficial purpose by the Tribe, but the water cannot be sold, leased, or transferred off reservation.

Additional sources of water also are transferred to the Tribe under the settlement. They include the Tribe's original allocation of 12,700 acre-feet of Central Arizona Project (CAP) water (under an amended contract), 33,000 acre-feet of CAP water not utilized for the Ak Chin Reservation under a 1984 statute, and 14,665 acre-feet of CAP water reallocated from the Phelps Dodge Corporation. The total water package is almost 68,000 acre-feet/year. Additionally, approval of the settlement will unleash more than \$50 million in economic development funds for the Tribe.

Process for Considering Settlement

The settlement, since it involves water subject to the Gila River adjudication, still must be considered under procedures and criteria adopted by the Arizona Supreme Court in 1991. On April 2, Judge Bolton approved the commencement of special proceedings to review the settlement and ordered that notice be given to all 24,000 claimants in the Gila River adjudication. Bolton also ordered the Department of Water Resources to complete a technical assessment of the

settlement and make its findings available to the court and parties. The Department's report is to be completed by May 17, 1999.


The settling parties have also been ordered to conduct a public meeting to provide other claimants and the public with additional information about the settlement. This meeting will be held at 3:00 p.m. on Wed., June 2, 1999, at the Arizona Department of Water Resources, 500 North Third St., Phoenix, AZ. Persons interested in the proposed settlement are urged to attend.

Claimants in the Gila River adjudication who oppose the settlement must file their objections with the superior court by July 1, 1999. The grounds for objecting to the settlement are outlined in the Supreme Court's 1991 order. The objector must assert that:

- the threshold requirements for commencing the special proceedings have not been satisfied;

- the approval of the settlement would cause material injury to the objector's claimed water right; or
- the water rights established in the settlement are more extensive than the Tribe, or the United States on its behalf, would be able to prove at trial.


After the objection period has closed, Special Master John E. Thorson will hear any objections, and recommend approval or disapproval to Bolton.

Many of the documents filed in this special proceeding will be available on the Special Master's web site (see *In re Proposed San Carlos Apache Tribe Water Rights Settlement*, No. W1-204, posted at <http://www.supreme.state.az.us/wm> 

New Design, Address for Master's Web Site

The Special Master's web site has been redesigned. It also has a new address: "<http://www.supreme.state.az.us/wm>". For awhile, the old address will still work by linking you to the new material.

The web site continues to include current court-approved mailing lists in active cases, recent decisions, and past issues of the *Bulletin*. Over the

next year, an increasing number of important pleadings and documents in pending cases will also be added to the site. Many of these documents will be the "portable document format (pdf)" and will require that the user have Adobe Acrobat Reader^(tm) loaded on his or her computer. Reader^(tm) may be downloaded for free from "<http://www.adobe.com>" 

Gila River Proceedings

March 26 Hearing

Judge Susan R. Bolton held a hearing on March 26, ostensibly to schedule additional motions concerning the claims of the Gila River Indian Community (GRIC). The hearing unfolded somewhat differently with reports of positive developments on many fronts including the proposed settlement involving the San Carlos Apache Tribe (*see p. 1*).

GRIC Negotiations at Crossroads

Opening summary judgment motions have been filed by the Gila Valley Irrigation Dist., Franklin Irrigation Dist., San Carlos Irrigation & Drainage Dist., Salt River Project, and City of Tempe (and joined by other parties) urging the court to find that the Gila River Indian Community's claims have already been determined in a federal court proceeding known as Globe Equity No. 59 (*see Aug.-Oct. 1998 Bulletin*). At Bolton's hearing, the United States and GRIC asked the court to delay responses to the motions for summary judgment to allow for intensive negotiations over the next 30 days. Many of the parties indicated that a rare and short opportunity exists for a settlement of GRIC's claims. Judge Bolton did extend the time for filing responses to June 1, 1999. Replies to the responses are due July 1, 1999. Bolton, however, confirmed that expert reports concerning the purposes of the Gila River Indian Reservation had to be filed on April 1, 1999 (*see below*).

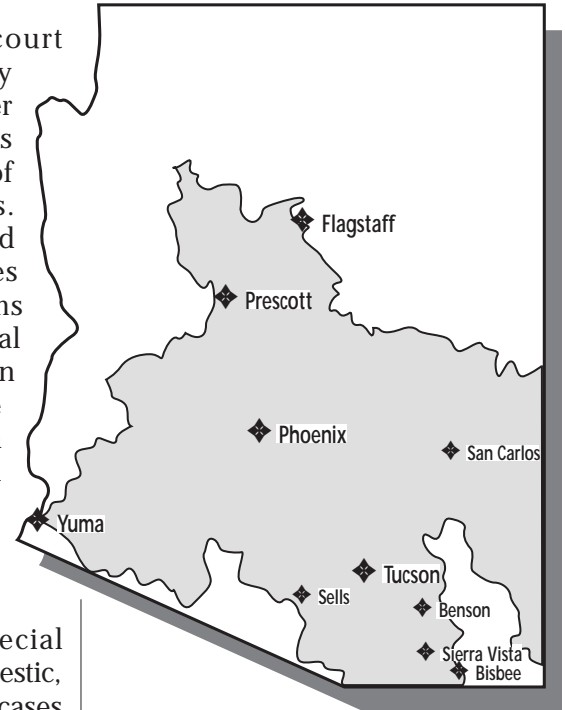
The Salt River Project and the City of Tempe had proposed in

December 1998 that the court schedule additional summary judgment motions on whether other past legal proceedings have determined all or part of GRIC's water right claims. These include the Haggard and Benson-Allison Decrees, cases decided by the Indian Claims Commission, and other federal court decisions. Judge Bolton ordered that such motions be filed by June 1, 1999, with responses due Aug. 30, and replies due Oct. 28, 1999.

San Pedro River Group 1 Cases

In 1994 and 1995 the Special Master decided a group of domestic, stockwatering, and stockpond cases and developed a procedure for the summary adjudication of these and similar small uses (*In re Sands Group of Cases*, No. W1-11-19; *see Dec. 1994 Bulletin* at p. 1 and *Mar. 1995 Bulletin* at p. 4). Legislation passed in 1995 allows parties to seek superior court review of the Master's determinations without waiting for all proceedings in a watershed to be concluded. With challenges to this legislation now resolved, Judge Bolton indicated she is now ready to hear and resolve objections to the Master's determinations.

Some parties filed objections shortly after passage of the 1995 legislation. At the suggestion of the City of Phoenix, Bolton agreed to give parties another chance to file objections. Such objections must be filed by April 30, 1999. Bolton will then issue a schedule for hearing these objections.



Future Directions in Adjudication

Several attorneys indicated they are unsure how the Gila River adjudication should now proceed in view of the Arizona Supreme Court striking many of the provisions passed in 1995 to alter the adjudication process (*see Jan. 1999 Special Issue Bulletin*). Judge Bolton asked the Steering Committee to meet and recommend a procedure in light of the Supreme Court's decision. She also asked the Department of Water Resources to report on how the hydrographic survey report for the San Pedro Watershed, issued in 1991, should be updated.

Next Hearing

The next hearing before Judge Bolton will occur at 2:00 p.m. on Friday, May 14, 1999.

continued on page 5...

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Gila River Indian Community Claims

Hydrographic Survey Report

Comments on the preliminary hydrographic survey report for the Gila River Indian Reservation are due to the Arizona Department of Water Resources by April 20, 1999 (*In re Water Right Claims of the Gila River Indian Community*, No. W1-203). The Department is still scheduled to file the final HSR on June 21, 1999. This date, however, may be postponed if the Department needs to assign staff to the preparation of the technical report analyzing the proposed settlement for the San Carlos Apache Reservation (see lead article, p. 1).

Additional GRIC Disclosure

Under their continuing obligation to disclose information, the parties

litigating preliminary issues concerning the claims of the Gila River Indian Community have recently submitted additional documents to the Office of the Special Master for indexing and copying. Submissions have been made by: Salt River Project and City of Tempe; Gila Valley Irrigation District and Franklin Irrigation District; City of Phoenix; the Cities of Chandler, Glendale, Mesa, and Scottsdale; and the United States. Copies of the indices of the submissions, as well as information regarding copies of the actual documents, may be ordered through Kathy Dolge in the Special Master's office [(602) 542-9600]. These recent submissions have also been added to the on-line index that may be accessed through the internet: <http://206.16.247.234:591/arizona/index.htm> or at the Special Master's web site <http://www.supreme.state.az.us/wm> ♠

Sources for Help

If you have questions in a particular area, here are the proper people to contact.

Access the Arizona Judicial Department web page at

<http://www.supreme.state.az.us> and the

Arizona General Stream Adjudication web page

<http://www.supreme.state.az.us/wm>

Adjudications, HSRs, WFRs, Discovery

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(Toll free in AZ) 1-800-352-8488

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Arizona State Courts Building
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TDD (602) 542-9545

Pleadings

Gila River

Oscar Garcia
Clerk's Office
Maricopa County Superior Court
Records Management Center
3345 W. Durango St.
Phoenix, AZ 85009
(602) 506-4139 /
FAX (602) 506-4516

Little Colorado River

Clerk's Office
Apache County Superior Court
Apache County Courthouse
P.O. Box 365
St. Johns, AZ 85936
(520) 337-4364
FAX (520) 337-2771

GRIC Expert Reports

Parties litigating the purposes of the Gila River Indian Reservation were ordered to file expert reports by April 1, 1999. As of that date, the following reports had been submitted:

- GRIC: Gookin Engineers/Dobyns, *Hydrologic History of the Gila River Indian Reservation*; Dobyns/Gookin Engineers, *Creation and Expansion of the Gila River Indian Reservation*; Rea, *Phreatophytes, River Pima and Maricopa Mesquite Usage, Destruction of Pima-Maricopa Prosperity*
- City of Phoenix: Kupel, *Historic Analysis of the Gila River Indian Reservation* -

Purpose of Establishment and Expansion of the Reservation

- Cities of Chandler, Glendale, Mesa, & Scottsdale: Lynch & Assoc., *Report on the Purposes in Establishing and Enlarging the Gila River Indian Reservation*
- SRP: Angel, *A History of Land and Water Use on the Gila River Reservation*
- United States: Homstad/Gallacher, *The Purposes of the Federal Government's Establishment and Enlargement of the Gila River Indian Reservation* ♠

CALENDAR

April 20, 1999

Case No. W1-203 (GR)
Due date: Comments to preliminary Gila River Indian Community HSR
(see minute entry Mar. 26, 1999)

April 22, 1999 - 9:30 a.m.

Case No. 6417 (LCR)
Status Conference
Apache County Courthouse,
St. Johns
(see minute entry Feb. 24, 1999)

April 23, 1999

Case No. W1-203 (GR)
Due date: Responses to motion to set discovery & briefing schedule regarding the effect of the Globe Equity 59 Decree on the San Carlos Apache Tribe (filed by GVID-FID, Mar. 19, 1999)
(see minute entry Mar. 26, 1999)

April 30, 1999

Case No. W1-11-19 (GR)
Due date: Objections to Special Master's Report on Group I Cases Involving Stockwatering, Stockponds, & Domestic Uses (Nov. 14, 1994, modified Feb. 23, 1995)
(see minute entry Mar. 26, 1999)

May 7, 1999

Case No. W1-203 (GR)
Due date: Reply to responses to motion to set discovery & briefing schedule regarding the effect of the Globe Equity 59 Decree on the San Carlos Apache Tribe (filed by GVID-FID, Mar. 19, 1999)
(see minute entry Mar. 26, 1999)

May 14, 1999

Case No. 6417-34-1 (LCR)
Due date: Navajo Nation and United States motions to dismiss
(see minute entry Mar. 2, 1999)

May 14, 1999 - 2:00 p.m.

Case Nos. W-1, W-2, W-3, W-4; W1-203; W1-204; W1-11-19 (GR)
Status Hearing
Maricopa County Courthouse,
East Court Building
101 W. Jefferson, Phoenix
Courtroom 513
(see minute entry Mar. 26, 1999)

May 17, 1999

Case No. W1-204 (GR)
Due date: DWR's factual analysis and technical assessment of the proposed San Carlos Apache Tribe water rights settlement
(see order for special proceedings Apr. 2, 1999)

June 1, 1999

Case No. W1-203 (GR)
Due date: Responses to motions for summary judgment re preclusive effect of Globe Equity decree
(see minute entry Mar. 26, 1999)

June 1, 1999

Case No. W1-203 (GR)
Due date: Motions for summary judgment re other past legal proceedings
(see joint motion Dec. 8, 1998, and minute entry Mar. 26, 1999)

June 2, 1999 - 3:00 p.m.

Case No. W1-204 (GR)
Public Program concerning the proposed San Carlos Apache Tribe water rights settlement
Department of Water Resources,
500 N. Third Street, Phoenix
(see order for special proceedings and notice Apr. 2, 1999)

June 14, 1999

Case No. 6417-34-1 (LCR)
Due date: Atkinson's Ltd. of Az. DBA Cameron Trading Post response to Navajo Nation and United States motions to dismiss
(see minute entry Mar. 2, 1999)

July 1, 1999

Case No. W1-203 (GR)
Due date: Replies to responses to motions for summary judgment re preclusive effect of Globe Equity decree
(see minute entry Mar. 26, 1999)

July 1, 1999

Case No. W1-204 (GR)
Due date: Objections to the application to approve the proposed San Carlos Apache Tribe water rights settlement
(see order for special proceedings Apr. 2, 1999)

July 1, 1999

Case No. 6417-34-1 (LCR)
Due date: Reply to response to motions to dismiss
(see minute entry Mar. 2, 1999)

July 21, 1999

Case No. W1-204 (GR)
Due date: Responses to objections to the application to approve the proposed San Carlos Apache Tribe water rights settlement
(see order for special proceedings Apr. 2, 1999)

Aug. 30, 1999

Case No. W1-203 (GR)
Due date: Responses to motions for summary judgment re other past legal proceedings
(see joint motion Dec. 8, 1998, and minute entry Mar. 26, 1999)

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Arizona General Stream Adjudication Bulletin April-July 1998 through February 1999

Beginning with January-March 1998, the Bulletin is published quarterly (or more frequently when events warrant) See previous indexes in April 1995, April 1996, April/May 1997, and April-July 1998 issues.

All issues contain articles titled "Gila River Proceedings" and "Little Colorado River Proceedings".

**ABA 17th Annual Water Law Conference -
Announcement**Nov. 98-Jan. 99

Dawson Named LCR Judge
.....Feb. 99

Gila River Indian Community ..
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.....Nov. 98-Jan. 99
.....Feb. 99

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.....Aug.-Oct. 98

**Little Colorado River: Upcoming
Status Conference**Aug.-Oct. 98

Minker Holds Last Hearing
.....Nov. 98-Jan. 99

New LCR Judge Sought
.....Nov. 98-Jan. 99

**Proposed Little Colorado River
Settlement at Crossroads**Apr.-July 98

Supreme Court Decides Special Action
.....Special Issue - Jan. 99

Supreme Court Denies Fees, Bolton Challenge
.....Feb. 99

Supreme Court Hears Claims to Groundwater
.....Aug.-Oct. 98

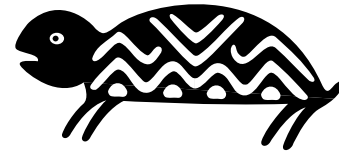
What is the Debate About?
Cases Mentioned Frequently During
Oral Argument

**Supreme Court Releases Documents,
Seeks Others**Nov. 98-Jan. 99

Supreme Court Schedules Issues 4 and 5
.....Apr.-July 98

Supreme Court Stays Gila River Adjudication
.....Nov. 98-Jan. 99

Trimble v. Chattman
.....Aug.-Oct. 98
.....Nov. 98-Jan. 99



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Oct. 28, 1999

Case No. W1-203 (GR)

Due date: Replies to responses to motions
for summary judgment re other past
legal proceedings

*(see joint motion Dec. 8, 1998, and minute
entry Mar. 26, 1999)*

Abbreviations

GR = Gila River adjudication

LCR = Little Colorado River adjudication



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