

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/09/2002

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

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

FILED: Jan. 22, 2002

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

MINUTE ENTRY

After reviewing the materials filed by the Arizona Department of Water Resources ("ADWR") and various claimants, and considering arguments of counsel,

IT IS ORDERED,

To promote an efficient and accurate determination of the jurisdictional subflow zones, ADWR shall prepare a supplemental report specifically identifying and describing the procedures and processes it proposes to use to establish the limits of the subflow zone within the San Pedro River watershed. This report shall include the following:

1. A proposal for determining the subflow zone that includes more than just consideration of the saturated lateral extent of the Holocene alluvium. The Court has considered ADWR's position that the decision of the Arizona Supreme Court in "Gila IV" requires that the subflow zone be initially delineated by simply mapping the saturated lateral limits of the floodplain of this alluvium. Many claimants object to

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this procedure and assert that ADWR's current proposal is not legally sufficient. The Court notes that the guidelines set forth in Gila IV direct ADWR to use all criteria geologically and hydrologically appropriate for subflow determination in each watershed. Even if ADWR is correct about the tasks mandated by Gila IV to determine the subflow zone, the work required to address the other considerations mentioned in Gila IV will serve to confirm the accuracy of ADWR's determinations. Therefore, in determining the subflow zone in the San Pedro River watershed ADWR shall use a methodology that addresses the appropriate use, if any, of each of the criterion listed in Gila IV, as well as any other relevant factors that will be helpful in insuring that ADWR's subflow zone determination is completed using all reasonable means to arrive at results that are as accurate as possible;

2. A test for determining if a well's cone of depression is withdrawing water from the subflow zone;
3. A set of rational guidelines for determining whether a given well, though pumping subflow, has a de minimis effect on the river system;
4. A method for including both perennial and intermittent streams as part of the subflow analysis, including streams that historically contained perennial or intermittent flows, but which now are ephemeral due to development and other human initiated actions. The Court recognizes this direction makes ADWR's task more complicated and expects the department to formulate a proposal using readily available historical data that will permit determination of water levels and locations as of date(s) prior to widespread diversion and depletion of Arizona's stream flows. Effluent fed streams are also to be included as part of ADWR's analysis; and

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5. A timeline for completion of the tasks outlined in the report. A similar timeline for the Upper Gila River and Verde River watersheds is also to be submitted.

ADWR's supplemental report shall be filed on or before March 29, 2002 and shall contain a certification by the ADWR Director that he has read and is familiar with the proposal set forth in the report.

After the report is filed, claimants and parties shall have until May 13, 2002 to file objections or requested revisions to the report. These comments may be presented by legal memorandum, exhibits and/or sworn declarations of experts.

After receipt of all timely filed objections, the Court will review ADWR's proposal and party comments. It is likely the Court will enter an order after this review directing ADWR as to how it is to proceed. Should the Court determine that further information or explanation is needed, the matter will be referred the Special Master for hearing. The declarations submitted by the parties will serve as the direct testimony at any hearing scheduled by the Special Master. The only testimony to be received at any scheduled hearing will be by way of cross-examination (and, perhaps, some limited redirect examination).

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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 and W-4 mailing list dated October 30, 2001.