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For questions concerning scheduling or procedure, contact Kathy Dolge at the Office of the Special Master, Arizona State Courts Building, 1501 W. Washington, Suite 228, Phoenix, AZ 85007; phone (602) 542-9600; TDD (602) 542-9545.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

HON. SUSAN R. BOLTON

April 11, 1997

P. Woods  
Deputy

No W-1, W-2, W-3, W-4 (Consolidated)

In re the General Adjudication of all Rights to Use Water in the Gila River System and Source

1:40 p.m. This is the time set for hearing on various pending motions. Present are: Michael Brophy, Lee Storey, Irvall Mortensen, Brad Brown, William Anger, Cynthia Haglin, Joe Sparks, Richard Morrison, Lauren Caster, Byron Lewis, John Weldon, David Brown, John Schaper, Charlotte Benson, Don Weesner, Riney Salmon, Marilyn Cage, Jim Callahan, Greg Kornrumph, Margaret Wilson, Burt Apker, Sally Worthington, Alfred Cox, Rod Lewis, Steven Helley, John Ryley, Patrick Barry, William Sullivan, Jim Johnson, Jennele O'Hair, Jerry Haggard, Carlos Ronstadt, Mike Pearce, Special Master John Thorson and Kathy Dolge.

Court Reporter Kim Myrick is present.

**As to the Apache Tribes' Objection to Portion of August 31, 1995 Minute Entry; Motion to Vacate Nunc Pro Tunc Portion of Minute Entry dated August 31, 1995; Motion for Evidentiary Hearing on DWR Request to Modify Contents of Indian Reservation HSRs and Request of DWR to Modify Prior Rulings of the Court Re HSRs:**

Joseph Sparks, representing the Apache Tribes, argued that Judge Goodfarb's prior order on Indian HSRs is law of the case and must be followed. He expressed his concern that the Department of Water Resources (DWR) requested substantial changes in the previous standing orders governing Indian HSR preparation and that no parties received notice of the request. He stated that DWR is a technical advisor only to the Court and has no authority to initiate such a change.

Patrick Barry, representing the United States, argued that the DWR must perform a PIA analysis and the preliminary HSR does not have such an analysis. He stated that the DWR may consider irrigation system designs, but is not suggesting that DWR design an actual system.

John Weldon, representing the Salt River Project claimants, disagreed with the Apache Tribes' motion. He stated that the Court has the judicial power to re-examine previous rulings as they apply to this case. He stated that the DWR will analyze the information filed in the GRIC HSR and perform a PIA. He stated that the parties can then object to the specific information and litigate those matters. He stated that the GRIC HSR is incomplete without an economic analysis and suggested that the DWR prepare a benefit cost analysis.

Alfred Cox, representing the Gila River Indian Community and Silas Kisto, stated that the policy of the State of Arizona is to adjudicate federal and Indian water rights first. He stated that a PIA analysis must be performed to determine how much water is required. He stated that this assessment can be obtained through existing information provided by the Gila River Indian Community.

Charlotte Benson, representing the State Land Department, stated that the GRIC HSR should proceed as soon as possible. She stated that proposed specific future uses must be included in the HSR process, which can then be analyzed by DWR.

Mr. Barry stated that it is necessary for DWR to perform an independent analysis and assessment of PIA on the reservation. He stated that the PIA analysis will measure the entitlement and the amount of the water right. The PIA analysis will also determine if the land is irrigable and if it is economic to do so.

Mr. Sparks reiterated the Apache Tribes' objection on a procedural basis. He stated that there has been no notice or opportunity to be heard regarding the precedent of the prior Court's ruling. He also objected to the legislature putting the Indian reservations at risk. He further stated that a final integrated decree needs to be decided upon by this Court. He then urged the Court to vacate the 8-31-95 Order; declare the HSR a draft; set a briefing schedule and argument. He expressed his concern that he does not want the GRIC HSR to set a precedent for the other Indian tribes.

### **Report of the Steering Committee:**

Jim Johnson, the newly elected Steering Committee Chairperson, introduced himself to the Court. Mr. Johnson addressed the proposed time frame for the parties to have experts investigate and prepare reports for the purpose of objection to or support of the GRIC HSR. The estimate is as follows: Expert reports supporting the claim to be filed by 4-1-99; expert reports objecting to the claim to be filed by 4-1-2000; and, rebuttal expert reports to be filed by 10-1-2000.

3:00 p.m. Court stands at recess.

3:15 p.m. Court reconvenes with respective parties and counsel present.

Court Reporter Kim Myrick is present.

**As to the Court's Ruling on the Apache Tribes' Motions:**

IT IS ORDERED taking under advisement the Apache Tribes' Motions.

IT IS FURTHER ORDERED that the comment period on the preliminary HSR would not be suspended.

The Court stated that a hearing will be held after the DWR has received and reviewed all of the comments and reported to the Court on the comments. The final HSR will not be published until the hearings have been completed.

After discussion with counsel,

IT IS FURTHER ORDERED extending the comment period on the preliminary HSR to 6-30-97.

**Discussion as to Reserved Water Rights:**

The Court asked the parties for comments as to how the prior decrees and agreements regarding reserved water rights affecting the GRIC should be addressed.

Jennele O'Hair, representing the Gila Valley Irrigation District, stated that a motion has been pending for 10 years on reserved water rights.

The Court suggested that a case management plan be developed to identify the decrees, agreements and settlements that may affect the GRIC water rights and a method for addressing the issues that need to be resolved. The Court also suggested that Special Master John Thorson be involved in the development of the case management plan with the Steering Committee.

John Schaper, representing the Buckeye Irrigation District, discussed the decrees, settlements and the impact of the Globe Equity proceedings.

John Weldon suggested that the Steering Committee propose a case management plan.

Mike Pearce, representing the Arizona Department of Water Resources, stated that the DWR will categorize and summarize the issues addressed by the comments. He also stated that the issues might be sequenced before a final recommendation is made on PIA.

After discussion with counsel,

IT IS ORDERED that the case management plan be proposed by the Steering Committee. No schedule will be set at this time for expert reports.

There being no objection thereto,

IT IS FURTHER ORDERED that Special Master John Thorson meet with the Steering Committee and chair the discussion of a proposed case management plan. The Master asked if there were any objections to his discussing meeting arrangements with Jim Johnson and there were none.

3:50 p.m. Court adjourns.

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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, W-4 mailing list dated 9-13-96.