

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

2/21/07

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

L. NEVENHOVEN
Deputy

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

COPY

Contested Case No. W1-207

FILED: March 7, 2007

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

In Re Proposed Gila River Indian
Community Settlement Proceedings

Oral Argument re Motions for
Summary Disposition on the
Objections filed by:

The Apache Tribes
And
The Lower Gila Water Users

MINUTE ENTRY

Northeast Courtroom 112

1:31 p.m. This is the time set for an Oral Argument re Motions for Summary Disposition on the Objections filed by the Apache Tribes and the Lower Gila Water Users. Present are: Susan B. Montgomery, Joe Sparks, and Robyn Interpreter on behalf of San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe (collectively "the Apache Tribes"); John C. Lemaster and L. William Staudenmaier on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users; Donald R. Pongrace, John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, Jennifer Giff, and Rodney B. Lewis on behalf of the Gila River Indian Community; F. Patrick Barry on behalf of the United States; Marilyn D. Cage on behalf of the City of Goodyear; William Anger on behalf of the Cities of Chandler, Glendale,

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Goodyear, Mesa, Peoria, and Scottsdale; Cynthia Haglin on behalf of the City of Chandler; John B. Weldon, Jr. and Lisa McKnight on her own behalf on behalf of Salt River Project; Charlotte Benson on behalf of the City of Tempe; Steve Wene on behalf of the City of Safford; Wilbert J. Taebel on behalf of the City of Mesa; Jim Callahan on behalf of the City of Phoenix; Gregg Houtz on behalf of the State of Arizona; David A. Brown and L. Anthony Fines on behalf of Gila Valley Irrigation District and Franklin Irrigation District; Janet Ronald on behalf of Arizona Department of Water Resources; Riney B. Salmon on behalf of the San Carlos Irrigation and Drainage; Mark A. McGinnis on behalf of Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District; Special Master George A. Schade, Jr. and his assistant Dana M. Slatalla are present.

Court Reporter, Patty Connolly, is present.

A recording of this proceeding is being made by CD (FTR).

Joe Sparks, Patrick Barry, Donald Pongrace, and Douglas Nelson present their arguments regarding how the proposed settlement agreement may affect the Apache Tribes and the Lower Gila Water Users.

3:18 p.m. Court stands at recess.

3:27 p.m. Court reconvenes. Present are: Susan B. Montgomery, Joe Sparks, and Robyn Interpreter on behalf of San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe (collectively "the Apache Tribes"); John C. Lemaster and L. William Staudenmaier on behalf of Phelps Dodge Corporation and Roosevelt Water Conservation District; Douglas C. Nelson on behalf of several claimants who have designated themselves the Lower Gila Water Users; Donald R. Pongrace, John T. Hestand, Ann Marie Chischilly, Timothy L. Pierson, Jennifer Giff, and Rodney B. Lewis on behalf of the Gila River Indian Community; F. Patrick Barry on behalf of the United States; Marilyn D. Cage on behalf of the City of Goodyear; William Anger on behalf of the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, and Scottsdale; Cynthia Haglin on behalf of the City of Chandler; John B. Weldon, Jr. and Lisa McKnight on her own behalf on behalf of Salt River Project; Charlotte Benson on behalf of the City of Tempe; Steve Wene on behalf of the City of Safford; Wilbert J. Taebel on behalf of the City of Mesa; Jim Callahan on behalf of the City of Phoenix; Gregg Houtz on behalf of the State of Arizona; David A. Brown and L. Anthony Fines on behalf of Gila Valley Irrigation District and Franklin Irrigation District; Janet Ronald on behalf of Arizona

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Department of Water Resources; Riney B. Salmon on behalf of the San Carlos Irrigation and Drainage; Mark A. McGinnis on behalf of Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, and Maricopa-Stanfield Irrigation and Drainage District; Special Master George A. Schade, Jr. and his assistant Dana M. Slatalla are present.

Court Reporter, Patty Connolly, is present.

A recording of this proceeding is being made by CD (FTR).

Donald Pongrace, Douglas Nelson, Patrick Barry, and Joe Sparks continue oral argument on the effect of the proposed settlement agreement.

IT IS ORDERED taking this matter under advisement. The matter will be deemed submitted, and the Court will rule by minute entry within 60 days.

4:32 p.m. Matter concludes.

LATER:

On February 21, 2007, the Court heard oral argument on the requests to dispose summarily the objections filed by the San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe (the "Apache Tribes") and the Town of Gila Bend, Arlington Canal Company, Enterprise Ranch, Paloma Irrigation and Drainage District, and various individuals and businesses (collectively the "Lower Gila Water Users" or "LGWU") to the proposed settlement agreement and judgment and decree of the Gila River Indian Community's ("GRIC" or the "Community") water rights in the Gila River Adjudication, and the related cross-motion of the Apache Tribes for summary disposition.

As was the case with prior considerations of objections filed in this proceeding, the Court finds that it cannot consider objections based upon allegations that the proposed settlement agreement and judgment and decree violate federal or state constitutional requirements or contain other legal defects that are not subject to review under the provisions of the Arizona Supreme Court's 1991 Special Procedural Order Providing for the Approval of Federal Water Rights Settlements, Including Those of Indian Tribes. Those claims are properly raised in another forum.

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A. The Apache Tribes' Objections

This Court's limited review of the proposed settlement mandates a finding that the Apache Tribes, like the Navajo Nation, cannot put forth a viable objection in this special proceeding. This is true because approval of the settlement agreement and the proposed judgment and decree cannot affect the Apache Tribes' water rights, claims or entitlements to water. Express provisions of the Gila River Indian Community Water Rights Settlement Act of 2004, Public Law 108-451, and of the settlement agreement, provide that any judgment and decree that might be entered by the Court cannot be construed to affect the water rights, claims or entitlements to water of any Indian tribe other than the Gila River Indian Community. For this reason,

IT IS ORDERED granting the motions for summary disposition and overruling the objections filed by the Apache Tribes.

IT IS FURTHER ORDERED denying the Apache Tribes' cross-motion for summary disposition.

B. The Lower Gila Water Users' Objections

With one exception, the Court finds that the Community and others seeking relief against the LGWU have established that there is no genuine dispute as to a material fact at issue, and they are entitled to summary disposition. The exception relates to the claim of the LGWU that the proposed settlement agreement permits the Community to manipulate water resources in a manner that would allow them to obtain rights to a quantity of water subject to this Court's jurisdiction that is greater than the Community could establish at trial. The Court has previously ruled that claimants have the right to be heard on this issue, and the Court finds that the moving parties have not demonstrated that summary disposition is appropriate for this portion of the LGWU objections. However, the discussion at oral argument raised questions as to whether there is a genuine dispute as to the proposed settlement agreement granting to GRIC water rights, subject to this Court's jurisdiction, that exceed those already determined by prior decrees (e.g. the Globe Equity and Haggard Decrees).

IT IS ORDERED granting the motions for summary disposition with respect to the objections of the Lower Gila Water Users except with respect to the issue of the quantity of

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water originating from sources subject to this adjudication that GRIC would receive should its settlement agreement be approved by the Court.

DATED this 7th day of March, 2007.

/s/ Eddward P. Ballinger, Jr.
The Honorable Eddward P. Ballinger, Jr.
JUDGE OF THE SUPERIOR COURT

A copy of this order is mailed to all parties on the Court-approved mailing list for Contested Case No. W1-207 dated October 12, 2006.