

FILED
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NOEL K. DESSAINT
CLERK SUPREME COURT
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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

) Supreme Court Nos. WC-79-0001 OF
) through WC-79-0004 (consolidated)
) [WC-1, WC-2, WC-3 and WC-4
) (consolidated)]
)
) Maricopa County Superior Court
) Nos. W-1, W-2, W-3 and W-4
) (consolidated)
)
) SPECIAL PROCEDURAL ORDER
) PROVIDING FOR THE APPROVAL
) OF FEDERAL WATER RIGHTS
) SETTLEMENTS, INCLUDING THOSE
) OF INDIAN TRIBES
)
)

Pursuant to Article 6, § 5 of the Arizona Constitution, and A.R.S. §§ 45-259 the following procedure is adopted for the approval of settlements of Indian water rights or water rights for other federal reservations arising in this adjudication:

A. Conditions Warranting Special Proceedings

Indian water rights or water rights for other federal reservations may be established in special proceedings in this general adjudication action which is subject to Article 9, Chapter 1 of Title 45, Arizona Revised Statutes, under the following conditions;

1. The Indian water rights or water rights for other federal reservation are the subject of a claim in the general adjudication action that is within the jurisdiction of the court;

2. The Indian water rights or water rights for other federal reservation have been determined in a settlement agreement among the Indian tribe (in the case of a settlement of Indian water rights), the United States, and a group of claimants in the general adjudication action whose claims

are adverse to the claim of the United States or the Indian tribe (in the case of a settlement of Indian water rights);

3. The settlement agreement which determines the Indian water rights or water rights for other federal reservation has been confirmed by an act of Congress or the appropriate federal agency;

4. The terms of the settlement agreement, or the act of Congress or the appropriate federal agency that confirms it require that the settlement agreement be approved by the general adjudication court or are conditioned upon such approval; and

5. There are special circumstances preventing the consideration of the settlement agreement settlement agreement in the normal course of the adjudication.

B. Application and Order for Special Proceedings.

1. Special proceedings under this order shall be conducted pursuant to an order for special proceedings issued in the general adjudication action upon the application of any one or more of the parties to the settlement agreement. The application may be filed ex parte by the parties to the settlement agreement and shall include:

- a. a stipulation of the parties to the settlement agreement setting forth the terms of the settlement agreement;
- b. a request that the general adjudication court enter an order approving the stipulation and a final judgment adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation;
- c. the special circumstances that prevent the consideration of the settlement agreement in the normal course of the adjudica-

tion;

d. a proposed form of order directing that special proceedings be conducted to approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation; and

e. information indicating the location of copies of the settlement agreement and supporting documents, which must be made available for review.

2. Upon the filing of the application, the general adjudication court shall grant the application and enter the order for special proceedings, if the court determines that the application satisfies the conditions specified in part A. and the requirements of part B.1.

3. The order for special proceedings shall contain the following statements and directions:

a. a statement of the general adjudication court's findings, which may be based upon representations made in the application, that the conditions enumerated in part A. are satisfied and that special proceedings are thus warranted;

b. a description of the Indian water rights or water rights for other federal reservation as agreed upon in the settlement agreement and set forth in the stipulation;

c. a statement that special proceedings with respect to the settlement agreement shall be conducted in accordance with this order, a copy of which shall be attached to the order for special proceedings, and a direction that the application and order for special proceedings shall be served forthwith in accordance with

part E. of this order;

d. a statement of the terms of other general procedural orders, if any, established by the general adjudication court, which are applicable to such special proceedings and which are not inconsistent with this order;

e. a statement that if the general adjudication court approves the stipulation between the parties to the settlement agreement and enters a final judgment adjudicating the Indian water rights or water rights for other federal reservation, the judgment will be binding upon all parties to the general adjudication; and

f. at the discretion of the general adjudication court, a direction to the Arizona Department of Water Resources to prepare a factual analysis and/or technical assessment of the Indian water rights or water rights for other federal reservation affected by the settlement and report to the adjudication court within 45 days.

C. Objections and Responses.

1. Any claimant in the general adjudication may file an objection with the general adjudication court asserting that:

a. approval of the stipulation and adjudication of the Indian water rights or water rights for other federal reservation as set forth in the stipulation would cause material injury to the objector's claimed water right;

b. the conditions enumerated in part A. of this order have not been satisfied; or

c. the water rights established in the settlement agreement and

set forth in the stipulation are more extensive than the Indian tribe or federal agency would have been able to establish at trial.

2. Objections shall include:

- a. the name and address of the objector;
- b. a description of the water rights asserted in the objector's claim;
- c. a statement of the legal basis for the objection, and the specific factual grounds upon which the objection is based;
- d. a list of any witnesses and exhibits that the objector intends to present at any hearing on the objection;
- e. any request for discovery relating to the objection and a statement as to the need for such discovery;
- f. and any other information as may be required in the order for summary proceedings.

3. Objections shall be filed within 45 days after the date of service of the order for special proceedings, or if a DWR report was requested by the adjudication court, within 45 days of the service of DWR's report.

4. Any party to the settlement agreement may file a response to each objection within 20 days after the time for filing objections has expired. The response shall include;

- a. any motion for summary disposition of the objection;
- b. a list of any witnesses and exhibits that the parties to the

settlement agreement intend to present at any hearing on the objection;

c. any request for discovery and a statement as to the need for such discovery;

d. any objections to a request for discovery made by the objector;

e. a statement that the response is being concurrently served upon parties entitled to service in accordance with this order; and

f. such other information as may be required in the order for special proceedings.

D. Resolution of Objections

1. The general adjudication court shall conduct hearings to resolve motions for summary disposition of objections, to grant or deny requests for discovery, and to set for hearing objections that are not resolved by motion for summary disposition. Requests for discovery shall be granted for good cause shown, but the court shall establish a schedule within which any permitted discovery shall be completed.

2. Motions for summary disposition of objections shall be granted where an objector lacks standing to assert an objection, has no valid legal basis for an objection, where an objection raises no genuine issues of material fact regarding the alleged injury of an objector's claim of water rights or where the adjudication court, applying the standards for deciding motions for summary judgment under Ariz. R. Civ. P. 56, finds that summary disposition should be granted.

3. Where an objection is not resolved by motion for summary disposi-

tion, or where an objection is not the subject of a motion for summary disposition, the general adjudication court shall conduct expedited hearings on such objections.

4. The general adjudication court, in its discretion, may refer all or part of the summary proceedings provided by this order to the special master appointed under the provisions of A.R.S. § 45-255. The general adjudication court may request the master's recommendation on the issue of approval, but shall not delegate to the special master the court's power to approve or decline to approve the stipulation or to enter a judgment accordingly.

5. Upon completion of all hearings on objections, and upon the receipt of the report of the master, if matters have been referred to the master, the general adjudication court shall enter a judgment either approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation or declining to do so.

6. The court shall approve the stipulation and adjudicate the Indian water rights or water rights for other federal reservation as set forth in the stipulation if, after hearing the evidence, it determines that the parties to the settlement have established by a preponderance of the evidence that:

- a. there is a reasonable basis to conclude that the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation are no more extensive than the Indian tribe or federal agency would have been able to prove at trial. In making this determination, the court

may consider in addition to other evidence offered, the statement of claimant filed by the Indian tribe or federal agency and all supporting documentation;

b. the water rights of the objector could not be established at a trial on the objector's water rights; the water rights of the objector, if established at a trial on the objector's water rights, would not be materially injured by the water rights of the Indian tribe or federal agency established in the settlement agreement and set forth in the stipulation; the objector is bound by the settlement agreement because his interests were adequately represented by a party to the settlement agreement by virtue of the objector's relationship to such party; or under the express terms of the settlement agreement and the stipulation, the objector is not bound and, therefore, both the objector and the Indian tribe or federal agency may pursue their remedies against each other in the adjudication; and

c. the settlement agreement has been reached in good faith.

7. The general adjudication court's judgment approving the stipulation and adjudicating the Indian water rights or water rights for other federal reservation as set forth in the stipulation, or its order declining to do so, shall be reviewable by the Arizona Supreme Court pursuant to the Court's Special Procedural Order Providing for Interlocutory Appeals and Certification.

E. Service and Notice.

1. Parties to the settlement agreement shall serve a copy of the application for special proceedings together with a copy of the order for

special proceedings in the manner provided in the adjudication court's Pre-Trial Order No. 1.

2. The parties to the settlement agreement shall provide notice by mail to all claimants in the general adjudication, in a form approved by the adjudication court, notifying them of the pendency of the special proceeding, advising them as to where complete copies of the application for special proceedings and order may be found, and including whatever other information the adjudication court may require.

3. The adjudication court shall serve a copy of DWR's report, if one was requested, as provided in the adjudication court's Pre-Trial Order No. 1.

4. A claimant filing an objection shall serve it, and all subsequent filings relating to the objection upon the parties to the settlement agreement. The parties to the settlement agreement shall serve their response to an objection, and all subsequent filings relating to that objection, upon all the objecting parties. Service under this part shall be made in accordance with Ariz R. Civ. P. 5(c)(1).

5. The adjudication court may in its discretion, require additional service of the application, objection, response, and other pleadings as deemed necessary in a given application, except that the final order of the court entered pursuant to part D.5. of this order shall be served pursuant to the adjudication court's Pre-Trial Order No. 1.

6. The adjudication court may, for good cause, extend the time limits established in parts B.3.f., C.3., and C.4. of this order.

7. The Clerk of the Superior Court for Maricopa County shall maintain a docket sheet on which all documents filed in the action shall be

entered. Docket sheet entries shall identify each filed document by title of the document and a brief description of its contents. The clerk shall update the docket sheet at least biweekly and furnish copies of it on a monthly basis to the Clerks of the Superior Court for all other counties. All clerks shall post in a prominent place a notice of the availability of the docket sheet in a form approved by the general adjudication court.

8. The Clerk of the Superior Court for Maricopa County shall maintain a separate special proceedings file which shall include copies of all documents filed in special proceedings conducted under this order.

DATED this _____ day of May, 1991.

STANLEY G. FELDMAN
Vice-Chief Justice