

SEP 27 2000

NOEL K. DESSAINT  
CLERK SUPREME COURT  
BY

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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3 IN RE THE GENERAL ADJUDICATION ) Supreme Court

4 OF ALL RIGHTS TO USE WATER IN ) No. WC-79-0006

5 THE LITTLE COLORADO RIVER SYSTEM ) [WC-6]

6 AND SOURCE. )

7 ) Apache County No. 6417

8 )

9 ) ADMINISTRATIVE ORDER

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8 Pursuant to Article 6, § 5 of the Arizona Constitution, and

9 A.R.S. § 45-259 the following procedure is adopted for the approval of

10 settlements of Indian water rights or water rights for other federal

11 reservation(s) or federal lands arising in this adjudication:

12 A. Conditions Warranting Special Proceeding

13 Settlements of Indian water rights claims or water rights

14 claims for other federal reservations or federal lands may be reviewed

15 and, if appropriate, approved in special proceedings in this general

16 adjudication action, which is subject to Article 9, Chapter 1 of Title

17 45, Arizona Revised Statutes, under the following conditions:

18 1. There are special circumstances that prevent the consideration

19 of the settlement agreement in the normal course of the adjudication.

20 2. The Indian water rights or water rights for other federal

21 reservations or federal lands are the subject of a claim in the general

22 adjudication action that is within the jurisdiction of the court;

23 3. The Indian water rights claims or water rights claims for

24 other federal reservation(s) or federal lands are the subject of a

25 settlement agreement among one or more Indian tribes (in the case of a

26 . . . .

1 settlement of Indian water rights), the United States, and a group of  
2 claimants in the general adjudication action whose claims are adverse to  
3 the claims of the United States or the Indian tribe(s) (in the case of  
4 a settlement of Indian water rights);

5 4. The settlement agreement resolving the Indian water rights  
6 claims or water rights claims for other federal reservation(s) or  
7 federal lands has been confirmed by an act of Congress or the  
8 appropriate federal agency; and

9 5. The terms of the settlement agreement, or the act of Congress  
10 or the appropriate federal agency that confirms it, require that the  
11 settlement agreement be approved by the general adjudication court or  
12 are conditioned upon such approval.

13 B. Application and Order for Special Proceedings

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

19 a. the special circumstances that prevent the consideration  
20 of the settlement agreement in the normal course of the  
21 adjudication;

22 b. a stipulation of the parties to the settlement agreement  
23 setting forth the terms of the settlement agreement;

24 c. a request that the general adjudication court enter an  
25 order approving the stipulation and the settlement agreement

26 . . .

1 and approving a final judgment adjudicating the Indian water  
2 rights or water rights for other federal reservation(s) or  
3 federal lands as set forth in the stipulation;

4 d. a proposed form of order directing that special  
5 proceedings be conducted to review the stipulation and  
6 settlement agreement, and to adjudicate the Indian water  
7 rights or water rights for other federal reservation(s) or  
8 federal lands as set forth in the stipulation; and

9 e. information indicating the location of copies of the  
10 settlement agreement and supporting documents for review by  
11 the public.

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

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

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

23 b. a description of the Indian water rights or water rights  
24 for other federal reservation(s) or federal lands as agreed  
25 upon in the settlement agreement and set forth in the  
26 stipulation;

1 c. a statement that special proceedings with respect to the  
2 settlement agreement shall be conducted in accordance with  
3 this order, a copy of which shall be attached to the order for  
4 special proceedings, and a direction that the application and  
5 order for special proceedings shall be served forthwith in  
6 accordance with part E. of this order;

7 d. a statement of the terms of other general procedural  
8 orders, if any, established by the general adjudication court,  
9 that are applicable to such special proceedings and consistent  
10 with this order;

11 e. a statement that if the general adjudication court  
12 approves the stipulation and settlement agreement and enters  
13 a final judgment adjudicating the Indian water rights or water  
14 rights for other federal reservation(s) or federal lands, the  
15 judgment will be binding upon all parties to the general  
16 adjudication except to the extent that the express terms of  
17 the stipulation and settlement agreement provide that non-  
18 signing parties will not be bound by the stipulation and  
19 settlement agreement; and

20 f. at the discretion of the general adjudication court, a  
21 direction to the Arizona Department of Water Resources ("DWR")  
22 to prepare a factual analysis and/or technical assessment of  
23 the Indian water rights or water rights for other federal  
24 reservation(s) or federal lands subject to the settlement  
25 agreement and report to the general adjudication court within  
26 such time as may be specified by the court.

1 C. Objections and Responses

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

4 a. approval of the stipulation and adjudication of the Indian  
5 water rights or water rights for other federal reservation(s)  
6 or federal lands as set forth in the stipulation would cause  
7 material injury to the objector's water rights;

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

10 c. the water rights established in the settlement agreement  
11 and set forth in the stipulation are not fair, adequate,  
12 reasonable, and consistent with applicable law, considering  
13 all of the circumstances surrounding the settlement and all of  
14 the consideration provided under the settlement; or

15 d. the statutes authorizing and implementing the settlement  
16 are unconstitutional or the manner in which they are being  
17 applied to implement the settlement is unconstitutional.

18 2. Objections shall include:

19 a. the name and address of the objector;

20 b. a description of the water rights asserted in the  
21 objector's claim;

22 c. a statement of the legal basis for the objection, and the  
23 specific factual grounds upon which the objection is based;

24 d. a list of any witnesses and exhibits that the objector  
25 intends to present at any hearing on the objection;

26 . . . .

1 e. any request for discovery relating to the objection and a  
2 statement as to the need for such discovery; and  
3 f. any other information the general adjudication court may  
4 require in the order for summary proceedings.

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

9 4. Any party to the settlement agreement may file a response to  
10 each objection within 40 days after the time for filing objections has  
11 expired. The response shall include:

- 12 a. any motion for summary disposition of the objection;
- 13 b. a list of any witnesses and exhibits that the responding  
14 party to the settlement agreement intends to present at any  
15 hearing on the objection;
- 16 c. any request for discovery and a statement as to the need  
17 for such discovery;
- 18 d. any objections to a request for discovery made by the  
19 objector;
- 20 e. a statement that the response is being concurrently served  
21 upon parties entitled to service in accordance with this  
22 order; and
- 23 f. any other information the general adjudication court may  
24 require in the order for special proceedings.

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1 D. Resolution of Objections

2 1. The general adjudication court may conduct hearings to resolve  
3 motions for summary disposition of objections or requests for discovery.  
4 Requests for discovery shall be granted for good cause shown and, if  
5 granted, the court shall establish a schedule within which any permitted  
6 discovery shall be completed.

7 2. Motions for summary disposition of objections shall be granted  
8 where an objector lacks standing to assert an objection or has asserted  
9 no valid legal basis for an objection, where an objection raises no  
10 genuine issues of material fact and fails to establish material injury  
11 to the objector's water rights, or where the general adjudication court,  
12 applying the standards for deciding motions for summary judgment under  
13 Ariz. R. Civ. P. 56, finds that summary disposition should be granted.

14 3. Where an objection is not resolved by motion for summary  
15 disposition, or where an objection is not the subject of a motion for  
16 summary disposition, the general adjudication court shall conduct  
17 expedited hearings on the objection.

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

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1           5.    Upon completion of all hearings, if any, on objections, and  
2 upon the receipt of the report of the master, if matters have been  
3 referred to the master, the general adjudication court shall enter a  
4 judgment either approving or disapproving the stipulation and settlement  
5 agreement and adjudicating the Indian water rights or water rights for  
6 other federal reservation(s) or federal lands as set forth in the  
7 stipulation.

8           6.    The court shall approve the stipulation and settlement  
9 agreement and adjudicate the Indian water rights or water rights for  
10 other federal reservation(s) or federal lands as set forth in the  
11 stipulation if, after considering any admissible evidence presented, it  
12 determines that the parties to the settlement have established by a  
13 preponderance of the evidence that:

14           a.    the settlement is fair, adequate, reasonable and  
15 consistent with applicable law, considering all of the  
16 circumstances surrounding the settlement and all of the  
17 consideration provided under the settlement. In making this  
18 determination, the court may consider in addition to other  
19 evidence offered, the statement of claimant filed by the  
20 Indian tribe(s) or federal agency and all supporting  
21 documentation;

22           b.    the water rights claimed by the objector could not be  
23 established at a trial on the objector's water rights; the  
24 water rights of the objector, if established at trial, would  
25 not be materially injured either by the water rights of the  
26 Indian tribe(s) or federal agency established in the



1 settlement agreement and set forth in the stipulation, or by  
2 the terms of the stipulation and settlement agreement; the  
3 objector is bound by the settlement agreement because the  
4 objector's interests were adequately represented by a party to  
5 the settlement agreement by virtue of the objector's  
6 relationship to such party; or under the express terms of the  
7 settlement agreement and the stipulation, the objector is not  
8 bound and, therefore, both the objector and the Indian  
9 tribe(s) or federal agency may pursue their remedies against  
10 each other in the adjudication;

11 c. the settlement agreement has been reached in good faith;  
12 and

13 d. the statutes authorizing and implementing the settlement  
14 are constitutional on their face and as applied to the  
15 objector.

16 7. The general adjudication court's judgment approving or  
17 disapproving the stipulation and settlement agreement and adjudicating  
18 the Indian water rights or water rights for other federal reservation(s)  
19 or federal lands as set forth in the stipulation is subject to review by  
20 the Arizona Supreme Court pursuant to the Court's Special Procedural  
21 Order Providing for Interlocutory Appeals and Certifications adopted  
22 June 1, 1994 in this adjudication.

23 E. Service and Notice

24 1. Parties to the settlement agreement shall serve a copy of the  
25 application for special proceedings, together with a copy of the order  
26 . . . .

1 for special proceedings, on all parties on the Court's approved mailing  
2 list.

3       2. The parties to the settlement agreement shall provide notice  
4 by mail to all claimants in the general adjudication, in a form approved  
5 by the general adjudication court, notifying them of the pendency of the  
6 special proceeding, advising them where complete copies of the  
7 application for special proceedings and the stipulation and settlement  
8 agreement will be available for review by the public, and including  
9 whatever other information the general adjudication court may require.

10       3. The general adjudication court shall cause a copy of any DWR  
11 report to be served as provided in the general adjudication court's Pre-  
12 trial Order No. 1.

13       4. A claimant filing an objection shall serve it, and all  
14 subsequent filings relating to the objection, upon the parties to the  
15 settlement agreement and all parties on the court-approved mailing list.  
16 The parties to the settlement agreement shall serve any response to an  
17 objection, and all subsequent filings relating to that objection, upon  
18 all the objecting parties and all parties on the court-approved mailing  
19 list. Service under this part shall be made in accordance with Ariz. R.  
20 Civ. P. 5(c)(1).

21       5. The general adjudication court may, in its discretion, require  
22 additional service of the application, objection, response, and other  
23 pleadings as deemed necessary in a given application, except that the  
24 final order of the court entered pursuant to part D.5 of this order  
25 shall be served on all parties on the Court's approved mailing list and  
26 any other party requesting notice of the Court's final action.

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


3           7.    The Clerk of the Superior Court for Apache County shall  
4 maintain a docket sheet on which all documents filed in the action shall  
5 be entered. Docket sheet entries shall identify each filed document by  
6 the name of the party filing the document and the title of the document.  
7 The clerk shall update the docket sheet at least biweekly and furnish  
8 copies of it on a monthly basis to the Clerks of the Superior Court for  
9 all other counties. All clerks shall post in a prominent place a notice  
10 of the availability of the docket sheet in a form approved by the  
11 general adjudication court.

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

16 F.    Effect on Claims Excluded from Scope of a Settlement

17           Judicial approval of a settlement will not prejudice any claim  
18 to the right to use water expressly excluded from the scope of the  
19 settlement agreement.

20           DATED this 27th day of September, 2000.

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23           Thomas A. Zlaket  
24           Chief Justice  
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