

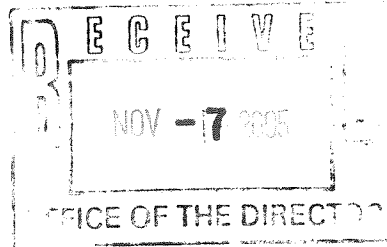


**Superior Court of Arizona**  
MARICOPA COUNTY

FROM THE CHAMBERS OF  
EDDWARD P. BALLINGER, JR.  
PRESIDING JUDGE  
NORTHEAST REGIONAL COURT CENTER

18380 NORTH 40th STREET, SUITE L  
PHOENIX, AZ 85032  
(602) 506-8551  
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November 2, 2005



*Smith, K  
Schiffer  
Ronald  
Burtell*

Herbert R. Guenther, Director  
Arizona Department of Water Resources  
500 North Third Street  
Phoenix, AZ 85004

Dear Director Guenther:

I'm writing in response to the letter I received from Deputy Director Karen Smith regarding the prospective demands that Arizona's two pending water adjudications will visit upon the Arizona Department of Water Resources.

The administrative and technical assistance of the Department is critical to the progress of the Gila River and Little Colorado River Adjudications. Over thirty years of litigation have shown that these cases are extremely complex, and while much progress has been made on several fronts, the work to be done to complete the first phase of the adjudications, (which involves identifying, quantifying and prioritizing thousands of water rights claims), must be expedited.

The Department currently assists the adjudication court by overseeing service of process, conducting field investigations, maintaining a document repository, providing assistance to the Clerks of the Superior Court, and preparing a variety of technical reports. Without appropriate funding (and by "appropriate funding" I mean significantly increased funding) for technical staff, travel, and equipment, the Department will be unable to fulfill responsibilities mandated by the general stream adjudication statutes, and the adjudications will be further delayed.

In 2003, when the state's economic situation was not favorable, the Court set the following relative priority the Department should give to the various projects pending in both cases:

1. Completion of the subflow determinations, cone of depression tests, and determination of *de minimis* water rights in the San Pedro River Watershed.
2. Work related to the Fort Huachuca contested case in the Gila River Adjudication.
3. The Hopi Tribe HSR in the Little Colorado River Adjudication.
4. Completion of work needed to resolve the Show Low Lake contested case in the Little Colorado River Adjudication.
5. Work related to the PWR 107 contested case in the Gila River Adjudication.

In the Gila River Adjudication, the Court directed that, “work by ADWR on the Gila River Indian Reservation HSR, San Carlos Apache Reservation HSR, Fort Apache Indian Reservation HSR, Verde River Watershed HSR, and matters relating to the St. David Irrigation District and Pomerene Water Users’ Association contested cases shall await completion of the matters set forth above absent further order from the Court.” *The latter contested cases have remained in abeyance for over twelve years.*

The Court stated that, “this Order does not direct ADWR to now undertake tasks only on one project at a time in the sequence set forth above. It may well be that certain circumstances justify performing work other than in strict compliance with the listed priorities.”

The Department has undertaken these priorities as well as its budget has allowed. Priority No. 4 has, in fact, been completed. The Department should continue carrying out these priorities. Priority No. 1 dealing with subflow issues in the Gila River Adjudication is extensive, intensive, and demanding and must remain a top priority. In the Little Colorado River Adjudication, the completion of a hydrographic survey report for the Hopi Indian Reservation remains the primary directive.

Currently, the Department provides administrative and technical support in contested cases before the Special Master dealing with federal non-Indian reserved water rights. This support, which includes fieldwork, mapping, and an electronic repository, should continue.

Looking ahead one to four years, the Court can estimate the following additional projects requiring the Department's administrative and technical support:

1. New contested cases addressing (1) the United States' federal reserved water rights claimed for the San Pedro Riparian National Conservation Area; and, (2) the establishment of *de minimis* standards and guidelines for agricultural, municipal, industrial, and other water uses in the Gila River Adjudication.
2. The Court's consideration of the Zuni Indian Tribe Water Rights Settlement Act in the Little Colorado River Adjudication.
3. The Court's consideration of the Arizona Water Settlements Act in the Gila River Adjudication.

The Court appreciates the Department's efforts to obtain additional funding for the adjudications and has tried to be reasonable and accommodating of budget limitations. However, the people of this state are not well served by the continuing uncertainty over water issues. Arizona's greatly improved financial health dictates that it is now time to ensure that the adjudication's progress in the next decade greatly surpasses that of the last thirty years.

Sincerely,

A handwritten signature in black ink, appearing to read "E. P. Ballinger, Jr.", written in a cursive style.

Eddward P. Ballinger, Jr.  
Judge of the Superior Court

epb/lg

cc: All persons listed on the Gila River Adjudication and Little Colorado River Adjudication Court-Approved Mailing Lists dated June 15, 2005.