

Online ARIZONA GENERAL STREAM ADJUDICATION BULLETIN
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***Complete copies of the Superior Court's minute entries
and decisions of the Special Master are available at
WWW.SUPREME.STATE.AZ.US/WM.***

**ARIZONA SUPREME COURT APPOINTS JUDGE BALLINGER
TO THE LITTLE COLORADO RIVER ADJUDICATION**

On January 17, 2002, the Arizona Supreme Court appointed Judge Eddward P. Ballinger, Jr., to act as judge in the Little Colorado River Adjudication. Judge Ballinger currently is the judge in the Gila River Adjudication.

Judge Ballinger assumed his duties as a Maricopa County Superior Court judge in May 1998. He serves as the Criminal Department's Associate Presiding Judge. He supervises Maricopa County's Drug Court program, which provides post-adjudicative treatment for those convicted of drug possession offenses. In December 2000, the Arizona Supreme Court appointed him to act as judge in the Gila River Adjudication.

Judge Ballinger received his J.D. and MBA from Ohio State University (1979) and a Master's in Law from New York University (1981). Prior to his Superior Court appointment, he was a partner in the law firm of Brown & Bain, P.A., where his practice focused on civil litigation and business reorganizations.

Although Judge Ballinger will act as judge in both adjudications, the Supreme Court did not consolidate the adjudications, which will continue to be separate judicial proceedings.

The appointment was made following the Court's invitation for comments from parties. Abitibi Consolidated Sales Corporation, Arizona Public Service Company, Aztec Land & Cattle Company, Navajo Nation, City of Phoenix, and Salt River Project submitted comments. The comments did not object to Judge Ballinger's appointment but suggested that the adjudications not be consolidated, and that the appointment of the same judge to both adjudications not set a precedent, but that future appointments should be considered on a case-by-case basis. 🌻

ARIZONA SUPREME COURT VACATES INTERLOCUTORY REVIEW ISSUE NO. 6

On April 2, 2002, the Arizona Supreme Court vacated its order granting review of interlocutory appeal issue number 6. The Court will no longer consider this issue, which was "Must claims of conflicting water use or interference with water rights be resolved as part of the general adjudication?" The Court also vacated that portion of Judge Stanley Z. Goodfarb's order, issued on August 1, 1989, relating to the interlocutory review of this issue.

Arizona Public Service Company, Gila River Indian Community, Navajo Nation, Salt River Project, and the United States filed comments with the Court. Generally, the comments asked the Court to vacate the interlocutory review because in light of the passage of time since 1989 and other determinations made since then, the issues related to this appeal should again be taken up by the Superior Court. 🌻

ARIZONA SUPREME COURT DENIES RECONSIDERATION

On April 2, 2002, the Arizona Supreme Court denied the Joint Motion for Reconsideration, filed by the United States and six Indian Tribes, of the Court's opinion regarding interlocutory appeal issue number 3.¹ The opinion was reported in the September-December 2001 issue of the *Bulletin*.

The joint motion asked the Supreme Court to delete or modify its statement that "a federal right vests on the date a reservation is created" because this issue is not only being litigated but also was not before the Court, and secondly, to clarify that the purpose of Indian reservations to provide a permanent and livable homeland must be broadly construed and not constrained to allow only for mere Tribal survival.

On March 11, 2002, the State Litigants filed a response opposing the motion for reconsideration on the ground that the Arizona Supreme Court "was

¹ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001).

simply repeating correct statements made in prior opinions of the United States Supreme Court." 

LITTLE COLORADO RIVER ADJUDICATION

UPCOMING STATUS CONFERENCE

On March 26, 2002, Judge Ballinger continued the status conference that Judge Dawson had set on April 18, 2002, to **Tuesday, June 4, 2002**, at 9:30 a.m., in the Apache County Superior Court in St. Johns, Arizona.

Judge Ballinger announced that the following issues would be heard:

1. The status of settlement negotiations;
2. The request that the stay previously entered by Judge Allen G. Minker be lifted and a trial date and discovery schedule be set with respect to the Show Low Lake, Show Low Irrigation Company, and Lakeside Irrigation Company contested cases;
3. The request that the court direct the Special Master to submit a report on the procedures used by the Arizona Department of Water Resources (ADWR) in providing technical assistance to the court and Special Master;
4. The request that the court determine if the Hopi Tribe has a water right claim, and if so, access to the main stem of the Little Colorado River;
5. The request that the court address issues relating to water right claims arising out of the Navajo-Hopi Land Dispute Settlement Act of 1996;
6. The request that the court should set a deadline for identifying all settlements, judgments, decrees, state or federal legislation or other matters that parties believe affect or control claims in this adjudication;
7. The need for court directives regarding recent rulings of the Arizona Supreme Court;
8. The scope of the Hopi Tribe Hydrographic Survey Report (HSR), including whether a deadline for filing amended claims and identifying allotted lands and related water right claims should be set at this time;
9. Requests related to comments submitted to ADWR's 1994 *HSR for Indian Lands in the Little Colorado River System* and ADWR's August 10, 2000, *Report Re: Scope of Indian Lands HSR*;

10. The joint request that the court approve stipulations entered into among certain of the parties in 2001; and,

11. The court wishes to hear from ADWR about the department's staffing and other resources available to complete the Hopi Tribe HSR. 🌟

PROTECTIVE ORDER ISSUED

On December 31, 2001, in one of his last actions before his retirement, Judge Edward L. Dawson issued a protective order regarding disclosure or use of the Hopi/Western Navajo Water Supply Study. The United States will prepare this study in order to assist with the settlement of certain Indian claims in the Little Colorado River Adjudication. The study is expected to be completed in 2003. Senator Jon Kyl has been instrumental in making this study possible.

The Navajo Nation's motion was reported in the September-December 2001 issue of the *Bulletin*. Several parties objected to the motion. The Court heard arguments on the motion at the conference held on August 30, 2001, at which time the Navajo Nation and most of the objectors submitted a proposed order. Judge Dawson gave parties an opportunity to submit written comments on the proposed order. No comments were submitted.

Judge Dawson's order provides as follows:

1. IT IS ORDERED that the Hopi/Western Navajo Water Supply Study shall not be used in any judicial proceeding in this Adjudication by any party to this Adjudication or by any representative of a party to this Adjudication.

2. IT IS FURTHER ORDERED that the Hopi/Western Navajo Water Supply Study shall be admissible as evidence to the extent it is relevant in any judicial proceedings related to the approval of a water rights settlement with the Navajo Nation and/or the Hopi Tribe.

3. IT IS FURTHER ORDERED that the terms of this Protective Order shall not apply to any existing documents, reports, studies or compilations of data that are referenced in, analyzed by or attached to the Hopi/Western Navajo Water Supply Study unless such existing documents, reports, studies or compilations of data were themselves prepared by a party to this Adjudication for settlement negotiation purposes in a manner protected by Rule 408, Ariz. R.

Evidence. Parties and counsel shall maintain a records system that facilitates the identification of those documents, reports, studies or compilations of data that were prepared by the party for settlement negotiation purposes.

4. IT IS FURTHER ORDERED that no expert witness shall offer an opinion on behalf of any party to this Adjudication that is based in whole or in part on the Hopi/Western Navajo Water Supply Study in any judicial proceeding in this Adjudication, except in those judicial proceedings related to the approval of a water rights settlement with the Navajo Nation and/or the Hopi Tribe.

5. IT IS FURTHER ORDERED that expert witnesses may offer an opinion on behalf of any party to this Adjudication that is based in whole or in part on any documents, reports, studies or compilations of data that are referenced in, analyzed by or attached to the Hopi/Western Navajo Water Supply Study, unless such existing documents, reports, studies or compilations of data were themselves prepared by a party to this Adjudication for settlement negotiation purposes in a manner protected by Rules 408 and 703, Ariz. R. Evidence.

6. IT IS FURTHER ORDERED that this Protective Order shall apply equally to all parties in this Adjudication.

7. IT IS FURTHER ORDERED that this Protective Order may be modified or terminated for good cause shown upon motion and after hearing. 🌻

**NO REIMBURSEMENT OF SETTLEMENT EXPENSES
FROM THE FUND OF CLAIMANT FILING FEES**

On March 26, 2002, Special Master Schade sent the following memorandum to all the parties actively participating in the Little Colorado River Adjudication settlement negotiations:

I wish to inform you of the recent direction by the Superior Court as to expenses incurred in connection with the efforts of the settlement judge. Currently, Apache County Superior Court Judge Michael C. Nelson acts as settlement judge in both the Little Colorado River and the Gila River Adjudications.

The adjudication statutes do not provide a means to reimburse the settlement judge's expenses. Ariz. Rev. Stat. § 45-255(B) states that "A master's compensation and expenses shall be fixed by the court and paid out of the fund of fees paid by the claimants ... " The fund of claimant filing fees cannot be used to reimburse settlement expenses. This determination is solely based on the clear language of this statute.

The settlement participants may wish to address among themselves future reimbursement of the settlement judge's travel expenses. From September 27, 1994, through February 26, 2002, reimbursement of travel expenses totaled \$33,174.33 for this adjudication, and since July 1, 1999, \$9,353.94 for the Gila River Adjudication.

The fund mentioned in A.R.S. § 45-255(B) consists of the fees paid by claimants when they file statements of claimant.

On April 18, 2002, Abitibi Consolidated Sales Corp., Arizona Public Service, Aztec Land & Cattle Company, the Navajo Nation, Salt River Project, and the Zuni Tribe filed a joint motion to clarify this directive. 🌻

GILA RIVER ADJUDICATION

ADWR'S REPORTS ON SUBFLOW ISSUES

On January 8, 2002, Judge Ballinger heard a presentation by the Arizona Department of Water Resources (ADWR) on its report on proposed criteria for determining a subflow zone. The Court heard ADWR's presentation and considered the written and oral comments of parties who filed comments.

A. The First Report

ADWR proposed using surficial maps and data, with the initial focus on perennial streams, and where necessary, using hydrogeologic or subsurface data. Riparian vegetation data would also be used in the analysis. The report presented procedures for mapping the subflow zone, but did not address either the issue of (1) wells whose cones of depression affect the subflow zone or surface flows in a measurable appreciable amount or (2) a timeline for drafting guidelines to exclude wells whose pumping of subflow is *de minimis*. Many of the

comments from parties emphasized that ADWR had not addressed some of the criteria contained in Judge Stanley Z. Goodfarb's order that the Arizona Supreme Court had affirmed, and ADWR should consider those factors to determine the subflow zone.

B. The Supplemental Report

On January 22, 2002, Judge Ballinger directed ADWR to submit by March 29, 2002, a supplemental report describing the procedures it proposes to use to establish the limits of the subflow zone within the San Pedro River watershed. This report was to include:

1. A proposal for determining the subflow zone that includes more than just consideration of the saturated lateral extent of the Holocene alluvium. The Court has considered ADWR's position that the decision of the Arizona Supreme Court in "Gila IV" requires that the subflow zone be initially delineated by simply mapping the saturated lateral limits of the floodplain of this alluvium. Many claimants object to this procedure and assert that ADWR's current proposal is not legally sufficient. The Court notes that the guidelines set forth in Gila IV direct ADWR to use all criteria geologically and hydrologically appropriate for subflow determination in each watershed. Even if ADWR is correct about the tasks mandated by Gila IV to determine the subflow zone, the work required to address the other considerations mentioned in Gila IV will serve to confirm the accuracy of ADWR's determinations. Therefore, in determining the subflow zone in the San Pedro River watershed ADWR shall use a methodology that addresses the appropriate use, if any, of each of the criterion listed in Gila IV, as well as any other relevant factors that will be helpful in insuring that ADWR's subflow zone determination is completed using all reasonable means to arrive at results that are as accurate as possible;
2. A test for determining if a well's cone of depression is withdrawing water from the subflow zone;
3. A set of rational guidelines for determining whether a given well, though pumping subflow, has a *de minimis* effect on the river system;
4. A method for including both perennial and intermittent streams as part of the subflow analysis, including streams that historically contained perennial or intermittent flows, but which

now are ephemeral due to development and other human initiated actions. The Court recognizes this direction makes ADWR's task more complicated and expects the department to formulate a proposal using readily available historical data that will permit determination of water levels and locations as of date(s) prior to widespread diversion and depletion of Arizona's stream flows. Effluent fed streams are also to be included as part of ADWR's analysis; and

5. A timeline for completion of the tasks outlined in the report. A similar timeline for the Upper Gila River and Verde River watersheds is also to be submitted.

After the report is filed, claimants and parties shall have until May 13, 2002 to file objections or requested revisions to the report. These comments may be presented by legal memorandum, exhibits and/or sworn declarations of experts.

On March 29, 2002, ADWR filed a 49-page Subflow Technical Report describing its proposed methodologies for determining the subflow zone, a test for the cone of depression issues, and guidelines for *de minimis* pumping. Parties have until May 13, 2002, to submit comments on ADWR's report.

From ADWR's reports and the parties' comments, the Superior Court will make the determinations necessary to implement the Supreme Court's subflow opinion. 

**IN RE THE WATER RIGHTS OF THE
GILA RIVER INDIAN COMMUNITY
CONTESTED CASE NO. W1-203**

On February 20, 2002, Judge Ballinger issued a ruling on the objections to former Special Master Thorson's reports dated June 30, 2000, and December 28, 2000. The full 43-page order is available at www.supreme.state.az.us/wm in the *Gila River Adjudication* page. Both reports addressed the preclusive effect that certain prior judicial decrees and judgments and agreements may have on water claims being asserted by the Gila River Indian Community (GRIC) and the United States on behalf of the reservation. One of these decrees is the Globe Equity No. 59 Decree, a 1935 federal court decree that adjudicated water rights along a portion of the Gila River.

The reports resulted from motions for summary judgment filed by several parties and hearings held by Special Master Thorson. On November 27 and 28, 2001, Judge Ballinger heard oral arguments on the objections to Mr. Thorson's reports. The motions were summarized in the September-December 2001 issue of the *Bulletin*.

At the outset, Judge Ballinger, a state judge, held that the Superior Court has jurisdiction to consider the extent of issue and claim preclusion that accompanies a federal judgment. The Court has jurisdiction to consider the preclusive effect, if any, of the federal district court's 1935 *Globe Equity No. 59 Decree* on water right claims being asserted in the Gila River Adjudication, a state judicial proceeding.

Judge Ballinger discussed at length issues relating to issue and claim preclusion doctrines, effect of consent judgments, and collateral and judicial estoppel. A short summary of each ruling is reported here; readers are directed to the full order found in the Special Master's Web pages.

A. Motions Addressed in Special Master Thorson's June 30, 2000, Report

A. Motions regarding the preclusive effect of the *Globe Equity No. 59 Decree* - GRANTED. "In this adjudication, neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River, including flow from the San Carlos River, except to the extent such rights were granted to them by the *Globe Equity Decree*." The Court discussed the similarities between the case that led to the *Globe Equity No. 59 Decree* and the case that resulted in the U.S. Supreme Court's decision in *Nevada v. United States* (the *Orr Ditch* case).²

B. Motion regarding the preclusive effect of the Florence-Casa Grande Landowners' Agreement, San Carlos Irrigation Project Landowners' Agreement, and the Project Repayment Contract - DENIED. This motion is moot as a result of a February 9, 2000, decision of the federal district court in ongoing proceedings in *Globe Equity*.

² *Nevada v. United States*, 463 U.S. 110, 103 S.Ct. 2906 (1983).

C. Motion regarding the preclusive effect of a Water Rights Settlement and Exchange Agreement and Consent to Assignment entered into between GRIC and ASARCO's predecessor in interest - DENIED. The Court agreed with Special Master Thorson that the issue presented in this motion, based on to the terms of the agreement, is not for the adjudication court to decide.

B. Motions Addressed in Special Master Thorson's December 28, 2000, Report

D. Motion regarding the preclusive effect of the judgment of the U.S. Claims Court entered in Docket No. 236D of *Gila River Indian Community v. U.S.*, Docket No. 236D - GRANTED. "Both GRIC and the United States shall be prohibited from asserting any claim in this adjudication that is inconsistent with the judgment of the Claims Court ..."

E. Motion regarding the preclusive effect of the judgment of the U.S. Claims Court entered in Docket No. 228 of *Gila River Indian Community v. U.S.* - DENIED. The moving parties have not shown that the issues considered in that case are sufficiently identical to issues in this adjudication, and the record reflects genuine disputes as to material facts thereby precluding summary judgment as a matter of law.

F. Motion regarding the preclusive effect of the 1903 *Haggard Decree* and the 1936 Maricopa Contract - DENIED. The U.S. Supreme Court's "recognition of the federal reserved water rights doctrine ... provides a 'rare' but sufficiently changed circumstance to provide an exception under the federal claims preclusion doctrine."

G. Motion regarding the preclusive effect of the 1907 Sacaton Agreement between SRP and the United States - GRANTED. "Neither GRIC nor the United States on behalf of GRIC shall be permitted to assert, in this adjudication, a claim that GRIC possesses any interest, ownership, or right to use, the dams, reservoirs, canals or other works owned by SRP that are related to the Sacaton Agreement."

H. Motion regarding the preclusive effect of the 1945 Buckeye-Arlington Agreements with the United States - DENIED. Judicial estoppel does not apply,

and there are genuine disputes as to material facts thereby precluding summary judgment as a matter of law.

Judge Ballinger approved Special Master Thorson's reports to the extent consistent with the Court's order, and the Court directed the Arizona Department of Water Resources to prepare future hydrographic survey reports in accordance with these determinations. 🌻

**IN RE THE PRECLUSIVE EFFECT OF THE GLOBE
EQUITY DECREE ON SPECIFIED PARTIES
CONTESTED CASE NO. W1-206**

On April 23, 2002, Judge Ballinger heard oral arguments on seven motions for summary judgment and related procedural motions. This contested case is an effort to examine the possible preclusive effect of the *Globe Equity No. 59 Decree* on parties other than the Gila River Indian Community (GRIC) and its reservation, particularly, the San Carlos Apache Tribe and the Franklin and Gila Valley Irrigation Districts.

ASARCO Incorporated, GRIC, Franklin Irrigation District, Gila Valley Irrigation District, Phelps Dodge Corporation, City of Safford, San Carlos Apache Tribe, and San Carlos Irrigation and Drainage District filed motions for summary judgment. It is not known when a ruling will be made. 🌻

**JUDGE BALLINGER ISSUES ORDER ON THE
GILA RIVER INDIAN RESERVATION FINAL HSR**

On April 17, 2002, Judge Ballinger issued an order giving the Arizona Department of Water Resources (ADWR) additional direction on proceeding with the final hydrographic survey report (HSR) for the Gila River Indian Reservation (GRIR) in light of the Arizona Supreme Court's opinion in *Gila V.*³ ADWR had sought guidance.

In *Gila V.*, the Court held that practicably irrigable acreage (PIA) is not the exclusive standard for quantifying federal reserved rights for Indian reservations. The Court listed a series of factors that although not exclusive, should be

considered in quantifying an Indian reservation's reserved rights. These factors are:

1. a tribe's history,
2. tribal culture,
3. tribal land's geography, topography, and natural resources, including groundwater availability,
4. a tribe's economic base and infrastructure,
5. past and historic water uses,
6. a tribe's present and projected future population, and
7. a tribe's minimal need for water.

The court may consider other information it deems relevant for quantification. But proposed uses must be reasonably feasible, which means achievable from a practical standpoint and economically sound.

In a status report, ADWR stated that it was prepared to continue with the guidance of prior orders of Judge Susan R. Bolton, who directed ADWR to address water uses and supply and land arability as part of a PIA analysis. But ADWR was also prepared to comply with new directives stemming from *Gila V*.

The State of Arizona Agency Claimants; Cities of Chandler, Glendale, Mesa, and Scottsdale; City of Phoenix; and Salt River Project commented on ADWR's report. The comments recommended that ADWR undertake additional work to report in the final GRIR HSR the factors listed in *Gila V*.

Judge Ballinger directed ADWR to "evaluate each of the factors listed by the Arizona Supreme Court in the *Gila V* decision in connection with the preparation of the GRIR HSR" and to "report in accordance with A.R.S. § 45-256(B) proposed water right attributes for each claim investigated."

The order gave the United States and the Gila River Indian Community the opportunity to file amended statements of claimant by July 1, 2002, so that ADWR could have "all information and supporting documentation relating to their current and future land and water use planning within the area affected" by the

³ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001).

HSR. ADWR can rely on the claims information it has on hand, as of that date, to complete the final HSR.

Judge Ballinger recognized that Judge Bolton's directives to ADWR relative to the physical factors of water use and supply and land arability, involved in an analysis of PIA, remain applicable should the Community have plans for future agricultural or irrigation projects. He ordered that Judge Bolton's directives to ADWR remain in effect.

ADWR was directed to "complete and publish the final GRIR HSR expeditiously." 

**IN RE FORT HUACHUCA
CONTESTED CASE NO. W1-11-605**

On January 14, 2002, the United States on behalf of Fort Huachuca, a military installation in southern Arizona, filed one amended statement of claimant for the fort's water right claims. The amendment reduced the claim from 10,087 to 7,459 acre-feet of groundwater annually. The fort previously filed a second statement of claimant, but that claim was not amended. The second claim is for 435 acre-feet of surface water and effluent annually. Both claims are based on federal reserved water rights.

On March 18, 2002, the Arizona Department of Water Resources (ADWR) filed a status report on updating the fort's watershed file reports (WFRs). ADWR has taken some preliminary steps to update the WFRs, but ADWR has such other demands, due to court directives, on its technical staff and resources that it indicated it will only be able to update the WFRs for Fort Huachuca "on a time available basis." ADWR is obtaining additional data for modeling, and several objections will have to be incorporated in the updating.

The parties in this contested case have until May 2, 2002, to comment on ADWR's report. 

**IN RE CORONADO NATIONAL MEMORIAL
CONTESTED CASE NO. W1-11-556**

On December 21, 2001, the United States and the objectors filed a report on the status of discussions regarding a full or partial settlement or further litigation of the claims associated with this contested case. The original abstracts for the ten wells were revised and are undergoing “a few minor revisions,” and most of the objectors “have expressed their approval of the revised abstracts and have acknowledged the continued validity of the abstracts for the three springs.” The parties are exchanging information regarding “the factual basis for the reserved right to groundwater” that might be associated with the well abstracts.

The parties do not believe that at this time the Superior Court, Special Master, or the Arizona Department of Water Resources need to make “any determinations” in order “to facilitate the final disposition of contested case number W1-11-556.” They “believe that there exists an excellent prospect for a full settlement of the objections raised in contested case number W1-11-556, [and] “therefore, no discussions occurred regarding a litigation schedule or the need for a pretrial conference.”

Counsel reported that the objections filed in contested case number W1-11-1132 are being reviewed, as these might be resolved as part of ongoing discussions due to the acquisition of a land inholding, and counsel asked that they be given until June 30, 2002, to resolve the objections filed in both W1-11-556 and W1-11-1132.

In an order issued on January 4, 2002, the Special Master asked the parties to submit a report by July 1, 2002, on the status of discussions of the claims associated with this contested case and with case number W1-11-1132. The Special Master thanked counsel for their efforts to resolve the objections filed in both cases. 🌻

POSSIBLE INITIATION OF A CONTESTED CASE RELATING TO PUBLIC WATER RESERVE NO. 107

On January 4, 2002, Special Master Schade asked the Bureau of Land Management (BLM) and objectors for comments regarding initiating a contested case addressing the BLM's water right claims pursuant to Public Water Reserve (PWR) No. 107. Comments were sought as to all issues that can or should be addressed. Issues may include the intent, purpose, scope, legal authority, and quantification of PWR No. 107, and any other issues deemed relevant.

ASARCO Incorporated, SRP, State of Arizona Agency Claimants, and the United States submitted comments. No objection was made to initiating a contested case, but the consensus was that parties should be given time to explore settlement of claims and objections prior to any litigation of issues.

The BLM, Safford District, filed 40 statements of claimant in the San Pedro River watershed claiming non-Indian federal reserved water rights in 39 springs and one dam pursuant to PWR No. 107, as interpreted in four opinions of the Solicitor of the U.S. Department of the Interior. ADWR investigated the claims and reported its findings in the 1991 Final San Pedro Hydrographic Survey Report (HSR). The Solicitor's opinions discussed how PWR No. 107, an Executive Order of President Coolidge issued on April 17, 1926, relates to BLM lands.

According to a Solicitor's opinion, "The Executive Order of April 17, 1926, reserved the minimum amount of water necessary in springs and waterholes to provide water for the purposes of human and animal consumption. The entire flow of these water sources was not necessarily reserved."⁴

The Apache Tribes, Arizona Game and Fish Department, Arizona State Land Department, ASARCO Incorporated, City of Benson, BLM, Mr. Wilford H. Claridge, Gila River Indian Community, City of Phoenix, Salt River Project, and the City of Sierra Vista are the objectors to the various watershed file reports reported in the 1991 San Pedro HSR.

⁴ *90 Interior Dec. 81 (1983) (Supplement II).*

Previously, before Judge Susan R. Bolton, the timing for proceeding with the determination of the issues related to water rights claimed pursuant to Public Water Reserve No. 107 was discussed, but priority for disposition of pending issues was given to other matters. 🌻

JACK SCHAPER RETIRES

John S. Schaper, Esq., who so ably represented the Buckeye Irrigation Company and the Buckeye Water Conservation and Drainage District for over forty years, has retired from his law practice.

Jack dealt with numerous water issues in legislative, administrative, and judicial proceedings during his career. He helped prepare testimony for Congressional hearings on funding the Central Arizona Project; participated in numerous Arizona State Land Department (ASLD) hearings on water right applications; represented the developer of Lake Patagonia; represented the Buckeye organizations in several Superior Court cases dealing with rights to sewage effluent and the Salt River, as well as the development of the Tres Rios project; and worked on the creation of water quality regulations by the original Water Quality Control Council and later the Arizona Department of Environmental Quality. Jack participated in the formulation and implementation of the 1980 Groundwater Management Act, and subsequently worked with the Arizona Department of Water Resources and the Legislature to obtain exemptions from water conservation and water duty requirements for agricultural water users in the St. Johns, Arlington, and Buckeye areas.

His involvement in the Gila River Adjudication began in May 1979, when he filed claims for his clients in the original proceedings before the ASLD. Judge Goodfarb (retired) appointed him as the first chair of the Gila Steering Committee. Jack was a continuous presence in the process until 2001.

Jack always recognized the ebb and flow of politics and economics in Arizona's water controversies. He understood the participants and the unique agenda, attributes, and liabilities which each brought to any dispute. Jack firmly believed that it was possible to disagree without being disagreeable and applied

that principle in his dealings with both allies and adversaries. We wish Jack the very best. 🌻

OTHER NEWS

UPDATE ON WEST MARICOPA COMBINE, INC. v. ADWR

On March 19, 2002, the Arizona Supreme Court denied the petitions for review filed by the Arizona Department of Water Resources and 10K, L.L.C., the objector to the issuance of a permit. This decision of the Arizona Court of Appeals⁵ was reported in the June-August 2001 and September-December 2001 issues of the *Bulletin*. 🌻

THE DIVIDING THE WATERS PROJECT

The *Dividing the Waters* Project is a “collaboration of a network of judges, special masters and referees who preside over western water adjudications and other complex water litigation.” As stated in the Project’s new Web site at www.dividingthewaters.org:

The central purpose of the Dividing the Waters project has been to improve the management and outcome of general stream adjudications and other complex water-related litigation affecting western people and the region's environment. State trial judges have been most directly served by this project although state appellate judges, federal trial and appellate judges, and U.S. supreme court special masters are also involved in project activities.

Since its inception in 1993, the project has pursued five goals:

1. To share information about how the different states and courts have structured and conducted stream adjudications and other complex water law litigation;
2. To discuss some of the major problems judges confront in conducting these adjudications and cases;
3. To discuss what works and what does not work so that others do not have to make the same mistakes;

⁵ 200 Ariz. 400, 26 P.3d 1171 (App. 2001).

4. To benefit from the expertise of resource people who are involved in the many subject areas touched by these cases; and

5. To enable judges, masters, and referees to meet one another and develop lasting personal and professional relationships.

The project has focused on case management, alternative dispute resolution, and the sharing of practical experience by a diverse group of judges, masters and referees who have participated in Dividing the Waters activities.

On this site you will find information about the western states in which there are general stream adjudications underway or significant complex water litigation. We will also publish legal decisions, commentary, articles and speeches about important aspects of water law and policy. You will find links to the web sites of general stream adjudications in 14 states, as well as links to other useful sources of information, including our efforts to train stakeholders in general stream adjudications so that they can represent themselves and their communities.

John Thorson, former Special Master of the Arizona General Stream Adjudication, has played a leading role in the establishment and activities of the Project. 