

Online ARIZONA GENERAL STREAM ADJUDICATION BULLETIN
Office of the Special Master • May - August 2002

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***Copies of the Superior Court's orders and minute entries,
the Special Master's decisions, and the calendar
of hearings and deadlines are available at
[HTTP://WWW.SUPREME.STATE.AZ.US/WM](http://www.supreme.state.az.us/wm)***

LEGISLATURE AMENDS ARIZONA REVISED STATUTES § 45-255(B)

On May 9, 2002, Governor Jane Dee Hull signed into law Senate Bill 1409.¹ The legislation, which became effective on August 22, 2002, amended A.R.S. § 45-255(B) to provide that "other expenses related to the conduct of an adjudication," in addition to the special master's compensation and expenses, shall be fixed by the Superior Court and paid out of the fund of filing fees paid by claimants.

The amendment provides statutory authority to pay the travel expenses of the settlement judge and to reimburse the Clerks of the Apache and Maricopa County Superior Courts for services rendered for the benefit of the adjudications. The amendment codifies the practice that previously existed, but which the Special Master revisited in 2001. Representative Jake Flake (Snowflake) introduced the amendment. The office of the Special Master did not participate in the Legislature's actions related to this legislation. 🌻

LITTLE COLORADO RIVER ADJUDICATION

JUDGE BALLINGER HOLDS HIS FIRST STATUS CONFERENCE

On June 4, 2002, Judge Ballinger held his first status conference following his appointment as trial judge of the Little Colorado River Adjudication. He presided over a full courtroom where many matters were heard.

Judge Ballinger lifted the stay in the contested case of Show Low Lake, a matter that was stayed in 1995, allowing discovery to proceed. But he denied two motions of the Navajo Nation related to the Arizona Department of Water Resources' (ADWR) use of information obtained during the course of settlement discussions, and second, reopening the litigation of the contested cases regarding the water right claims of the Show Low Irrigation Company and the Lakeside Irrigation Company.

¹ *2002 Arizona Session Laws, chapter 208, section 1.*

Regarding ADWR's ongoing preparation of the Hopi Tribal Lands HSR (Hopi HSR), the Court gave the following directions:

1. ADWR must investigate all the statements of claimant for both reservation and non-reservation lands filed by the Hopi Tribe and the United States, making the scope of the HSR broader than current reservation lands.

2. The Hopi Tribe was directed to provide to ADWR information regarding allotted lands and water right claims associated with them.

3. The Hopi Tribe and the United States have until December 20, 2002, to file new or amended claims so that ADWR will have the most current information as it prepares the HSR.

4. ADWR must incorporate the holdings of the Arizona Supreme Court made in the five interlocutory appeals decided to date.

5. ADWR is to consider, use, or adopt several procedures suggested by the parties regarding the contents of the Hopi HSR.

6. ADWR was directed to report "proposed water right attributes" for all claims of the Hopi Tribe and the United States, but to report "adequate descriptive and technical information about proposed future uses of water" on both reservation and non-reservation lands.

7. The Hopi Tribe and ADWR were encouraged to work on a cooperative and ongoing basis to share information and supporting documentation relating to the Tribe's current and future land and water use plans. ADWR will need this information because ADWR will have to undertake economic analysis and consider proposed water uses that may not be known to ADWR.

Judge Ballinger directed ADWR to submit a report describing available and needed staff and the projected costs, related to providing technical advice to the Court and the Special Master in both adjudications. ADWR has claimed

budgetary constraints, and the report will aid the Court, parties, and ADWR to plan ADWR's schedule of investigations and HSRs.

Judge Ballinger approved a series of stipulations that several major non-Indian parties and the United States agreed upon regarding a large number of the water right claims of these claimants. The stipulations cover federal non-Indian reserved rights such as water rights of the National Park Service and the Forest Service. No Indian reserved rights were involved in the stipulations. The binding effect of the stipulations will be limited to the parties who signed them. Judge Ballinger ordered that the stipulations "shall bind each signatory, but not any other party in this adjudication, ADWR, this court, or the special master in any respect." ADWR will not be precluded from investigating or reporting the information contained in the stipulations.

Commenting, "All of the parties have urged the court to consider and resolve the claims held by and for Indian Tribes prior to addressing other claims," Judge Ballinger directed that:

[A]ny party who believes that prior agreements, decrees, or federal and state legislation, as well as other issues properly addressed by expedited disposition, have adjudicated, settled or otherwise significantly affected any part of the reserved water right claims held by the Hopi Tribe, Navajo Nation, San Juan Southern Paiute Tribe, and the Zuni Pueblo shall file a disclosure on or before Friday, November 22, 2002, setting forth each matter the party believes affects the relevant reserved water rights claim and a brief factual summary of the basis for each assertion.

As these disclosures will be important for the scheduling of future proceedings, the order is recited in its entirety:

Each disclosure filed shall list the relevant documents and the names and addresses of any witnesses, including expert witnesses, the party believes will be called to substantiate the

claim. The disclosure shall contain a fair description of the substance of expected testimony. For any expert witnesses, the disclosure shall include a copy of the expert's curriculum vitae and a list of case names and dates of all prior testimony in water right cases. No copies of the listed documents shall be attached to the disclosure statement served on the parties or the court. The disclosure shall contain a well considered statement as to whether or not that party believes any issue can be resolved by summary judgment based on the existing documents or whether an evidentiary hearing will be needed and shall state the time required to prepare such motions or for an evidentiary hearing.

Given the recent amendment of A.R.S. § 45-255(B) (reported on page 2), the Court deemed moot a motion regarding using the fund of claimants' filing fees to reimburse the settlement judge's travel expenses.

The next hearing will be held on Tuesday, October 8, 2002, at 9:30 a.m., in St. Johns. Judge Ballinger will consider any issues or matters pertaining to the Hopi HSR that parties wish to raise. 🍁

GILA RIVER ADJUDICATION

PETITIONS FOR INTERLOCUTORY REVIEW FILED WITH THE ARIZONA SUPREME COURT CONTESTED CASE NO. W1-203

The United States and the Gila River Indian Community (GRIC) have asked the Arizona Supreme Court to review Judge Ballinger's February 20, 2002, order in this contested case. The petitions present two main issues for interlocutory review,² (1) the preclusive effect of the *Globe Equity Decree*,³ and

² An interlocutory appeal asks an appellate court to decide an issue which cannot be resolved on the facts in the case, but whose resolution is essential to a final decision in the case. On September 26, 1989, the Arizona Supreme Court adopted a Special Procedural Order Providing for Interlocutory Appeals and Certifications. The purpose of the order was to establish a procedure for early review of substantial questions in the Gila River Adjudication. Any party could petition the Supreme Court to review, by interlocutory appeal, any ruling of the Superior Court, and the Superior Court could certify to the Supreme Court questions deemed substantial for review.

³ The *Globe Equity Decree* is the decree relating to water rights to the upper mainstem of the Gila River that the United States District Court entered in *United States v. Gila Valley Irr. Dist., Globe Equity No. 59 (D. Ariz. 1935)*.

(2) the judicial estoppel effect of *Docket 236-D*.⁴ The Salt River Project (SRP) filed a cross-petition for interlocutory review.

A. The United States' Petition for Interlocutory Review

The United States submits that the trial court erred in “seemingly” allowing non-parties to the *Globe Equity Decree* to assert the *Globe Equity Decree* against GRIC. The trial court erred in applying *Nevada v. United States*⁵ because the *Globe Equity Decree* was intended to be limited in scope, while *Nevada* was a more comprehensive adjudication than *Globe Equity*. The effect of the ruling is to allow both subsequent appropriators and parties who were specifically excluded from *Globe Equity* (those who asserted claims on the tributaries of the Gila River) to assert the preclusive effect of the *Globe Equity Decree* against both GRIC and the United States. The U.S. Supreme Court's exception to the mutuality requirement for *res judicata*, found in *Nevada*, is not applicable in the Gila River Adjudication.

Regarding the judicial estoppel effect that the trial court gave to *Docket 236-D*, the United States argues that the court erred in applying judicial estoppel against the United States as trustee of GRIC because:

1. The parties are not the same. The parties who requested summary judgment based on that matter were not parties in *Docket 236-D*. Only the United States and GRIC were parties in *Docket 236-D*.
2. The issues are not the same. In *Docket 236-D*, “the extent of the

⁴ The designation “*Docket 236-D*” refers to the proceeding GRIC initiated before the former Indian Claims Commission that resulted in the decision of the United States Court of Claims in *Gila River Pima-Maricopa Indian Community v. United States*, which was affirmed in part by the Court of Appeals for the Federal Circuit, 695 F.2d 559 (1982). *Docket 236-D* concerned GRIC's water, property, and accounting disputes with the United States that GRIC brought before the Indian Claims Commission and its successor tribunal, the United States Court of Claims. In Judge Ballinger's order, this matter is also referred to as “*Gila 236*.”

⁵ *Nevada v. United States*, 463 U.S. 110, 103 S. Ct. 2906 (1983).

reserved water right for the Gila River Indian Reservation ... was not the focus of the case.” *Docket 236-D* dealt with monetary damages against the United States for breach of duty for failing to preserve the Reservation’s right to water from the Salt River and not with the determination of GRIC’s water right claims to the Salt River as against other appropriators.

3. The United States cannot be seen as having prevailed, “in the sense relevant to judicial estoppel,” on the issue of “the extent of the Reservation’s reserved water right from the Salt River ... because a resolution of the issue was unnecessary to the [Indian Claims Commission’s] ultimate ruling.” The issue of GRIC’s water rights to the Salt River was not the focus of *Docket 236-D*.

B. GRIC’s Petition for Interlocutory Review

GRIC submits that the trial court erred in:

1. Not treating the *Globe Equity Decree* “as a contract for purposes of interpretation,” because that decree is a consent judgment.
2. Weighing the evidence in determining summary judgment motions.
3. Ruling that the cause of action in *Globe Equity* is the same as the cause of action in the Gila River Adjudication.
4. Finding adversity between parties sufficient to apply *res judicata*. In *Globe Equity*, the Indians were co-plaintiffs with the Pima allottees, and there was insufficient adversity between these parties.
5. Ruling that GRIC “was restricted from calling for water from the San Carlos River,” as the *Globe Equity Decree* does not limit “the rights of any party to use water from the San Carlos River.”

Addressing the collateral and judicial estoppel effects of *Docket 236-D*, GRIC argues that:

1. The Court erred in applying collateral estoppel to the decision in *Docket 236-D* because the issue of whether GRIC “has a prospective right to use water from the Salt River” was not “essential to the final judgment” reached in *Globe Equity*, and this issue was not litigated in *Globe Equity*. This issue was neither “essential” nor “applicable” to the decision, which went up on appeal to the Court of Appeals for the Federal Circuit, “concerning the United States’ lack of monetary liability prior to 1946.”

2. Collateral estoppel “does not arise from an Indian Claims Commission decision that does not result in loss of aboriginal title.”

3. The trial court erred in applying judicial estoppel as a bar to the United States’ claims as trustee for GRIC because:

(a) The parties are not the same or “identical.”

(b) The issues are not the same. In *Docket 236-D* the issue “was whether the United States was subject to monetary damages for failure to provide the Gila River Indian Reservation with water prior to 1946, and the question in the [Gila River Adjudication] is whether the United States can claim water on behalf of its beneficiary GRIC.”

(c) The United States did not assert an inconsistent position in *Docket 236-D*. “In *236-D*, [the United States] claimed that the *Winters* doctrine was irrelevant to its obligation to provide a delivery system, and in [this adjudication] asserts that the Community is entitled to its prospective *Winters* rights.”

(d) The policy reasons enunciated in opinions of the United States Supreme Court dictate that “judicial estoppel should not be applied against the United States, in non-mutual cases.”

C. SRP's Cross-Petition for Interlocutory Review

SRP filed a cross-petition for review arguing that the Arizona Supreme Court should not grant interlocutory review of any part of Judge Ballinger's order, but if it does accept review of any part of the order, "the Court should review it in its entirety rather than in a piecemeal fashion." If the Supreme Court accepts interlocutory review, SRP requests that the Court grant review of four rulings of Judge Ballinger that denied SRP's motions for summary judgment. SRP asks for interlocutory review of those four rulings that were adverse to its positions.

D. The Responses to the Petitions of the United States and GRIC

ASARCO Incorporated urged the Supreme Court not to grant interlocutory review "unless it also grants interlocutory review of the corresponding ruling on the preclusive effect of the *Globe Equity Decree* on the water right claims of the San Carlos Apache Tribe," because the "two rulings present many of the same issues," and they should be reviewed simultaneously. Judge Ballinger's ruling relating to the San Carlos Apache Tribe was issued on May 17, 2002, in Contested Case No. W1-206.

But if the Supreme Court determines that it will "review all aspects" of the February 20, 2002, order, ASARCO asks "that the Court include the Superior Court's ruling on ASARCO's motion." Judge Ballinger denied ASARCO's motion for summary judgment regarding a water exchange agreement with GRIC to which ASARCO succeeded in interest.

The Gila Valley and Franklin Irrigation Districts oppose the petitions but ask that the Supreme Court deny them "without prejudice so that the petitions can be renewed if changed circumstances make interlocutory review appropriate at some future time." The districts argue that:

1. The issues for which review is sought are the subject of a pending comprehensive settlement that appears will soon be completed. Granting review would divert the parties' attention from completing the settlement.

2. The preclusive effect of the *Globe Equity Decree* on GRIC should not be considered separately from its preclusive effect on the San Carlos Apache Tribe, and if review is granted, it should be granted for the rulings in both W1-203 and W1-206.

The City of Safford opposes both petitions for the reasons that the trial court correctly applied *res judicata* (“In *Globe Equity*, the United States raised or could have raised all then-existing water rights claims for the entire Reservation.”) and the law set forth in *Nevada* including the mutuality exception. Furthermore, granting review “will slow down the adjudication” unnecessarily.

SRP’s response asks the Supreme Court not to accept review of any of the issues even though SRP filed a cross-petition for interlocutory review. The “Court should refrain from stepping into this case once again and should allow the trial court to go forward with its work as expeditiously as possible.” SRP argues that the Court did not err in granting summary judgment on the two issues for which the United States and GRIC seek interlocutory review.

SRP also argues that the Court should not accept review of these issues until after Contested Case No. W1-203 is completed. ADWR is expected to publish the Gila River Indian Reservation Final HSR later this year or in 2003, and discovery has been underway since 1998. The proper time to review the trial court’s rulings in this contested case is at the completion of the case rather than addressing “individualized” issues “in a piecemeal fashion.” Lastly, the factors specified in the Special Procedural Order for Interlocutory Appeals that should be considered in reviewing a petition do not weigh heavily in favor of granting review.

E. GRIC’s Response to SRP’s Cross-Petition for Review

GRIC argues that the trial court and the Special Master denied SRP’s motions for summary judgment because there are material facts in dispute, and because the true facts must be decided in trial, “it is inappropriate for the Court to review ... the decision that summary judgment is not appropriate.” The trial court

found that SRP had not fulfilled the requirements for summary judgment as facts are in dispute, and summary judgment is not a substitute for trial when facts are disputed. Whether SRP's facts are the correct facts or not must be decided in trial.

F. GRIC's Reply to the Responses

GRIC responds that savings of judicial time and the parties' time and effort would accrue, and the adjudications would not be delayed, if the petitions for review were granted. Furthermore, the trial court did not follow the rules of summary judgment by considering and weighing the evidence disclosed by the parties without giving an opportunity to challenge the evidence. GRIC argues that the trial court established new requirements for *res judicata* and collateral and judicial estoppel.

It is not known when the Arizona Supreme Court will make a decision on the petitions. 🌻

COURT DENIES SAN CARLOS APACHE TRIBE'S MOTION TO ALTER OR AMEND JUDGMENT CONTESTED CASE NO. W1-206

Judge Ballinger denied the San Carlos Apache Tribe's Motion to Alter or Amend the Judgment following the court's order issued on May 17, 2002. The Tribe asked Judge Ballinger to rule on several issues that the Tribe argued it had raised in its summary judgment motion, but which the Court did not address in its order, and furthermore, asked that the Court clarify one of its rulings.

The Tribe claimed that five of the fifteen issues it raised "cannot be addressed by reference to the Court's" order entered in Contested Case No. W1-203 regarding the preclusive effect of the *Globe Equity Decree* on the Gila River Indian Community (GRIC). Because these five issues pertained directly to the San Carlos Apache Tribe's water right claims or were raised only by the Tribe and not by others, the Court should rule on these issues, as they remained unanswered.

Two of the issues were that the Tribe is not barred from pursuing aboriginal or reserved water rights to the mainstem of the Gila River based upon lack of privity because the Congress did not authorize the Secretary of the Interior or the U.S. Attorney General to represent the Tribe in *Globe Equity No. 59* or to waive its aboriginal or federal reserved water rights, and second, the United States inadequately represented the Tribe in *Globe Equity No. 59*. The Tribe also asked that the Court “clarify its ruling that the ‘mutuality exception’ rule under *Nevada v. United States*⁶ only applies to the mainstem of the Gila River, and not to any of the tributaries.”

The Gila Valley and Franklin Irrigation Districts opposed the motion, arguing that Judge Ballinger did not have to rule on these two issues because the U.S. Supreme Court has rejected the Tribe’s arguments in other opinions, including in *Nevada*.

ASARCO Incorporated also opposed the motion arguing that the order was not a “judgment” under procedural rules; the trial court had no obligation to submit findings of fact and conclusions of law; and the minute entry can be amended later when a “judgment” is formally entered. 🌻

COURT GIVES DIRECTIONS TO ADWR FOR THE GILA RIVER INDIAN RESERVATION FINAL HSR

Judge Ballinger denied a motion filed by the United States asking for reconsideration of the April 17, 2002, order giving the Arizona Department of Water Resources (ADWR) directions for preparing the final hydrographic survey report for the Gila River Indian Reservation (GRIR HSR). The order directed ADWR to incorporate in the GRIR HSR the Arizona Supreme Court’s holdings in *Gila V.*⁷ The Gila River Indian Community (GRIC) partially joined in the motion.

⁶ *Nevada v. United States*, 463 U.S. 110, 103 S. Ct. 2906 (1983).

⁷ *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).

The United States and GRIC asked that the Court modify the order to provide that meetings between the United States, GRIC, and ADWR to submit information to prepare the HSR should be voluntary; that the information would remain confidential and not be subject to disclosure until objections had been filed to the GRIR HSR; that the production of information to ADWR would not limit the scope of evidence that the United States may introduce at a subsequent hearing on objections to the GRIR HSR or prohibit the later amendment of claims; and that the United States would not be required to supplement their information prior to publication of the HSR.

GRIC joined in these requests and filed its own motion for an extension until November 1, 2002, as more time was needed to compile the information the Court had directed GRIC to provide to ADWR. In a separate order, Judge Ballinger granted the request for additional time until November 1, 2002.

Judge Ballinger noted “the applicability and disclosure requirements found in” Rule 26.1 of the *Arizona Rules of Civil Procedure*. This rule requires the “prompt disclosure of information” regarding the factual basis and legal theory of a party’s claim or defense, a party’s potential witnesses, and any “tangible evidence or relevant documents” that a “party plans to use at trial.” The rule, in effect since July 1992, was part of the “Zlaket rules”⁸ which were intended to reduce discovery abuses and expedite trials.

Judge Ballinger ruled that:

[A]pplying the principles of Rule 26 ... assists in expediting resolution of important issues and is consistent with the edict of the Arizona Supreme Court in *Gila V* It is not unfair to require those who hold the claims being evaluated to comply with applicable disclosure rules in connection with this undertaking. When this proceeding focuses its attention on resolving issues relating to water right claims, the court expects each affected claimant, objector, or other party participating in claim or issue resolution, to abide by the disclosure requirements set forth in Rule 26.1.

⁸ Named after Thomas A. Zlaket, who later was appointed a Justice of the Arizona Supreme Court.

Judge Ballinger, however, held that compliance with disclosure requirements will not preclude a party from “making use of any of the amendment, objection or other rights” contained in the general adjudication statutes. 🌻

CLAIMANTS COMMENT ON ADWR’S SUBFLOW REPORT

On June 17, 2002,⁹ thirty-eight parties and other persons submitted comments to the Arizona Department of Water Resources’ (ADWR) report on proposed criteria for determining the subflow zone, a test for the cone of depression issues, and guidelines for *de minimis* pumping. The United States, State of Arizona, Indian Tribes, major parties, one county, cities, towns, irrigation districts, and interested persons and associations submitted comments. The trial court will review the comments and schedule further proceedings. 🌻

SETTLEMENT DISCUSSIONS CONTINUE IN RE CORONADO NATIONAL MEMORIAL CONTESTED CASE NO. W1-11-556

The Special Master has given the United States and the objectors until December 31, 2002, to file a status report on the discussions regarding a full or partial settlement or further litigation of the claims associated with this contested case and Contested Case No. W1-11-1132. The status report may include other matters the parties believe should be addressed in order to conclude these cases.

On July 1, 2002, the United States and the objectors reported on the status of discussions regarding a settlement or further litigation of the claims in this case and Contested Case No. W1-11-1132. The United States has filed assignments for the two statements of claimant associated with Contested Case No. W1-11-1132 and is determining which wells, now numbering 18, are covered by the two claims.

⁹ Upon request of claimants, Judge Ballinger extended the deadline to June 17, 2002.

After determining the condition of the wells and their need for park operations, the United States may amend or file new claims. The United States anticipates completing these tasks by September 30, 2002.

Once these matters are clarified, proposed water right abstracts can be prepared for the claims at issue in these cases. The United States requested that it and the objectors be given until December 31, 2002, to prepare and discuss proposed water right abstracts for the wells and the springs.

The Special Master noted that progress is being made in addressing these claims. Field investigations are being done. The Master commented that if possible, the United States and the Arizona Department of Water Resources could use these cases to see if and how cooperative efforts in field investigations could work. Further, the scope of the contested case has been expanded to include the claims associated with Contested Case No. W1-11-1132. 🌻

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

The Special Master has directed the Arizona Department of Water Resources (ADWR) to proceed with the preparation of a supplemental contested case HSR for Fort Huachuca's amended claims. Although a deadline for the completion of the HSR was not set, the Special Master indicated that September 30, 2003, should be a target date for the publication of this HSR.

The United States, Bella Vista Water Company, Inc., and ADWR filed comments regarding ADWR's investigation of the amended water right claims filed by the United States on behalf of the Fort. ADWR raised several issues that it believed should be addressed prior to or concurrently with the preparation of the HSR, but the Special Master addressed those issues in his order. The Master stated that, "Setting all or some of ADWR's issues for determination as issues of broad legal importance is appealing, but outweighing that appeal are concerns that such a process could (1) last two to three years, (2) create time consuming discovery and disclosure disputes, and (3) become a basis to postpone technical

work. The proper, most efficient, and promising direction for this contested case is to proceed with the completion of the HSR. Technical investigations and factual analyses must move to the forefront for this case to succeed.”

ADWR was requested to submit a status report on the progress of the HSR on March 7, 2003. 🗓️

**SPECIAL MASTER INITIATES CONTESTED CASE
IN RE PUBLIC WATER RESERVE 107
CONTESTED CASE NO. W1-11-1174**

On June 26, 2002, Special Master Schade initiated a contested case addressing the Bureau of Land Management’s (BLM) water right claims under Public Water Reserve No. 107 (PWR 107).¹⁰ Two issues were designated as issues of broad legal importance and will be briefed under the *Rules for Proceedings Before the Special Master*. Claimants in both the Gila River and the Little Colorado River Adjudications will have the opportunity to participate in the determination of the two issues of broad legal importance.

The Special Master’s order:

1. Allows the BLM until December 31, 2002, to file amended statements of claimant related to these PWR 107 claims.

2. Directs ADWR to file by March 3, 2003, a supplemental contested case HSR containing ADWR’s proposed water right attributes for each PWR 107 water right claim that ADWR investigates.

3. Designates the following as issues of broad legal importance to be briefed before the Special Master pursuant to Section 12.00, *Rules for Proceedings Before the Special Master*¹¹:

(a). Which claimants or parties should ADWR notify that a supplemental contested case HSR has been filed, and which claimants or parties should be allowed to file written objections?

¹⁰ PWR 107 is an Executive Order issued by President Coolidge on April 17, 1926. The BLM claims that under this order the BLM has a federal reserved water right in certain springs located on lands under its management. The Solicitor of the U.S. Department of the Interior has interpreted the order in four opinions.

¹¹ A copy of the Rules may be obtained from the Office of the Special Master.

(b). How much time should claimants or parties have to file written objections after ADWR files a supplemental contested case HSR?

The Special Master concluded that these issues should be addressed at this early point because they relate to the first steps to take after ADWR files a supplemental contested case HSR, and the determinations of these issues will apply in other contested cases. The PWR 107 claims present other important issues, but those can be addressed later.

4. Allows claimants in both adjudications to participate in the determination of the issues of broad legal importance.

5. Requires claimants who wish to participate in the determination of the issues of broad legal importance to file a Notice of Intent to Appear by August 30, 2002.

6. Directs that the initial disclosure of information required by Rule 26.1(a), *Arizona Rules of Civil Procedure*, be completed as fully as then possible by September 13, 2002. Disclosures shall be limited to the determination of the designated issues of broad legal importance.

7. Requires that motions addressing one or both of the issues of broad legal importance be filed by September 27, 2002. Responses shall be filed by November 1, 2002, and replies by November 22, 2002.

8. Allows ADWR to submit comments about administrative or procedural points that would be beneficial for the litigants to know.

9. Allows discovery under Rule 26, *Arizona Rules of Civil Procedure*, but only as to matters disclosed under Rule 26.1(a).

10. Provides that a claimant may request the Special Master to report the Master's determination of an issue of broad legal importance to the Maricopa County Superior Court under Rule 53, *Arizona Rules of Civil Procedure*, prior to the completion of the Special Master's report of the proposed water rights in the San Pedro River Watershed.

11. Sets arguments on the motions on the issues of broad legal importance on December 10, 2002, at 9:00 a.m., Conference Room 230, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona. 🌻

OTHER NEWS

NEW RULE FOR ADMISSION OF ATTORNEYS NOT ADMITTED TO PRACTICE IN ARIZONA

The Arizona Supreme Court has amended Rule 33(d), Rules of the Supreme Court, relating to the admission *pro hac vice* of attorneys not admitted to practice law in Arizona who wish to participate in a matter in an Arizona court or administrative agency. The new rule became effective on September 1, 2002.

The amendments are significant changes from the prior procedures attorneys not admitted to practice in Arizona had to follow in order to represent a client in the adjudications. All attorneys who might be subject to the new rule should be aware of its requirements.

The new requisites require the filing of a verified application with the State Bar of Arizona accompanied by a certificate of standing from the attorney's state of admission and an application fee equal to 85% of the current dues paid by active members of the State Bar of Arizona. An order granting *pro hac vice* status will be valid for one year, after which time, the application must be renewed, including payment of partial dues, until the client's representation ends. The State Bar of Arizona must be informed of any disciplinary proceedings occurring in the state of admission or if permission to appear *pro hac vice* has been revoked during the one-year period.

On July 15, 2002, the Special Master sent a copy of the new rule to all attorneys on the court-approved mailing lists for both adjudications who show an out-of-state address. The new rule is available at http://www.supreme.state.az.us/rules/ramd_pdf/R-01-0009.pdf. 🌻