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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 <WWW.SUPREME.STATE.AZ.US/WM>***

**ARIZONA SUPREME COURT TO HEAR ORAL ARGUMENT  
ON PETITIONS FOR INTERLOCUTORY REVIEW  
IN RE THE PRECLUSIVE EFFECT OF  
THE GLOBE EQUITY NO. 59 DECREE  
ON SPECIFIED PARTIES  
CONTESTED CASE NO. W1-206**

On December 2, 2004, at 2:00 p.m., in Phoenix, the Arizona Supreme Court will hear oral argument on the issues raised in the San Carlos Apache Tribe's Petition for Interlocutory Review and Phelps Dodge Corporation's Cross-Petition for Interlocutory Review. The petitions seek review of the Superior Court's rulings in Contested Case No. W1-206. Ninety minutes are reserved for argument. The San Carlos Apache Tribe requested oral argument on April 16, 2004. The Supreme Court's docket number is WC-02-0003-IR.<sup>1</sup>

This contested case examined the possible preclusive effect of the *Globe Equity No. 59 Decree*<sup>2</sup> on parties other than the Gila River Indian Community (GRIC) and its reservation, particularly, the Gila Valley and Franklin Irrigation Districts and the San Carlos Apache Tribe. ASARCO Incorporated, GRIC, the Gila Valley and Franklin Irrigation Districts, Phelps Dodge Corporation, City of Safford (Safford), San Carlos Apache Tribe, and the San Carlos Irrigation and Drainage District filed motions for summary judgment on which the Superior Court ruled.

An electronic copy of the Superior Court's order is posted at <http://www.supreme.state.az.us/wm> on the *Gila River Adjudication* page under Contested Case No. W1-206. The Superior Court's rulings and the background of the petitions for interlocutory review were reported in the January-April 2002, May-August 2002, and September-December 2002 issues of the Online Arizona General Stream Adjudication Bulletin. The articles are available at <http://www.supreme.state.az.us/wm> on the *Online Bulletin* page.

The article in the September-December 2002 *Bulletin* described the petition and cross-petition for interlocutory review as follows:

On November 19, 2002, the San Carlos Apache Tribe filed a petition for interlocutory review of the Superior Court's grant of partial summary judgment in Contested Case No. W1-206.... The San Carlos Apache Tribe's petition for interlocutory review claims that the Superior Court erred in:

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<sup>1</sup> Docket Nos. WC-02-0001-IR and WC-02-0002-IR involve the petitions for interlocutory appeal filed by the United States and GRIC, respectively, seeking review of the Superior Court's rulings made in Contested Case No. W1-203.

<sup>2</sup> 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)*.

1. Holding that “*res judicata* precluded the Tribe from claiming water for its Tribal homeland in excess [of] the United States’ right to water for 1,000 acres under the *Globe Equity Decree* (hereinafter “*Decree*”).”
2. Ruling that the statement of facts contained in the Court’s order entered in Contested Case No. W1-203 involving GRIC also applies to the Tribe in Contested Case No. W1-206 that involves the Tribe.
3. Denying the Tribe’s “request for an evidentiary hearing on the adequacy of the representation of the United States as its Trustee” and ruling that *res judicata* applies to the Tribe under the *Decree*.
4. Failing “to conclude that the United States lacked any authority from Congress to represent the Apache Tribe in *Globe Equity* or to dispose of Tribal property which would preclude the application of *res judicata*; or alternatively, where it failed to conclude that the issue of lack of authority is a disputed issue of material fact.”
5. Failing to determine that a 1924 agreement or the *Decree* precludes GRIC and the United States, acting on behalf of GRIC, “from claiming any water rights to the San Carlos River in the Gila River stream adjudication.”
6. Ruling that the mutuality exception under *Nevada v. United States*, 463 U.S. 110 (1983), “does not apply to bar any claims that the parties to the *Globe Equity Decree* may have to any of the tributaries of the Gila River in the Gila River stream adjudication.”

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On December 23, 2002, Phelps Dodge Corporation filed a cross-petition for interlocutory review in W1-206. The petition claims that the Superior Court erred when it found that the claims of the parties in *Globe Equity* to the waters of the Gila River’s tributaries had been “split” from those parties’ claims to the decreed segment of the River. By “splitting” the claims, the trial court found that tributary claims had not been part of the *Decree* and were not affected by the same preclusive effect that the *Decree* had on the parties’ claims to the decreed stem of the Gila River. According to Phelps Dodge, the Superior Court properly found that the *Decree* had a preclusive effect on the San Carlos Apache Tribe’s claims to the Gila River, but erred when it found that the *Decree* did not preclude further claims to the Gila River’s tributaries.

Phelps Dodge claims that the trial court “ruled inaccurately that the Amended Complaint [in the *Globe Equity* litigation] indicated an intent to exclude or split the tributary claims.” The trial court inferred from the amended complaint and from the *Globe Equity Decree* that the Apache Tribe’s tributary claims had been split or excluded from the *Decree*. Phelps Dodge claims that neither document shows intent to split the claims, and the Apache Tribe’s claims to tributaries are barred by the *Globe Equity Decree*.

ASARCO, Safford, Salt River Project, San Carlos Irrigation and Drainage District, and the United States filed responses. ASARCO, Safford, SRP, and the San Carlos Irrigation and Drainage District urge that the Tribe’s petition be denied. The United States suggests that the Supreme Court grant the Tribe’s petition for the limited purpose of reversing the Superior Court and remanding the issues to the Superior Court for reconsideration. 🍷

### **SUPERIOR COURT WILL HOLD JOINT STATUS HEARING**

On October 1, 2004, at 1:30 p.m., in the Central Court Building, Courtroom 402, 201 West Jefferson Avenue, in Phoenix, the Court will hold a joint status hearing for claimants in both the Little Colorado River Adjudication and the Gila River Adjudication. This will mark the Court’s first joint hearing involving both adjudications.

The purpose of the hearing is to consider whether the Court will set oral argument and a briefing schedule for the State of Arizona’s Motion for Partial Summary Judgment Establishing the Existence of Federal Reserved Water Rights for State Trust Lands. The State has filed the motion in both adjudications on behalf of the Arizona State Land Department.

On November 22, 2002, the State of Arizona filed a motion for partial summary judgment in the Little Colorado River Adjudication seeking an order declaring that approximately 8.8 million acres of land currently held in trust by the State, which lands were acquired by various grants from the United States Congress, possess federal reserved water rights in accordance with the principles recognized in *Winters v. United States*, 207 U.S. 564 (1908), *Arizona v. California*, 373 U.S. 546 (1963), and *Cappaert v. United States*, 426 U.S. 128 (1976). The State asked the Court to set oral argument and a briefing schedule for the motion.

Several parties filed responses supporting and opposing either or both the motion and the request for oral argument and briefing. The State replied. Because the Court needed to address other matters in the Little Colorado River Adjudication, on March 6, 2003, it deferred consideration of the motion until the first general hearing held in the Little Colorado River Adjudication during 2004.

At that hearing held on April 6, 2004, the Court informed the parties it believed the State’s motion, if granted, could have significant impact on both

pending adjudications. Accordingly, the Court instructed the State to file its motion for partial summary judgment and request for oral argument and a briefing schedule in the Gila River Adjudication. On June 21, 2004, the State filed its motion and request in the Gila River Adjudication.

The State argues that it is “timely and appropriate for this Court to resolve as a matter of law the threshold issue of whether there are federal reserved water rights for State Trust Lands.” The State believes “the federal implied-reservation-of-water doctrine applies to State Trust Lands” because these lands “were withdrawn from the public domain and reserved by Congress for the specific federal purpose of providing the most substantial financial support possible for the common schools of Arizona and certain other public institutions designated as beneficiaries of the Trust, and water is essential to the fulfillment of that federal purpose.”

The legal issue is of first impression because “there is not yet any legal precedent recognizing the existence of federally reserved water rights for State Trust Lands.” There are approximately 5.1 million acres of State Trust Lands within the area of the Gila River Adjudication and 1.4 million acres within the Little Colorado River Adjudication. Other State Trust lands are outside the adjudication basins.

The motion does not extend to the quantification of the reserved rights, should the Court find they exist for State Trust Lands. The quantification and attributes of any federal reserved water rights for State Trust Lands would be determined through the subsequent process of preparing hydrographic survey reports and adjudicating water uses and objections. These reports would be prepared as individual watersheds are adjudicated.

Parties opposing the State’s requests argue that the motion raises mixed questions of law and fact that should not be addressed in the absence of a fully developed factual record, the Court should complete the subflow proceedings and adjudicative determinations in the San Pedro River Watershed, the Court should not be diverted from the schedule it has set for both adjudications, the motion improperly seeks to advance the State’s water right claims to the forefront of the adjudications, and answering this legal issue will still leave unresolved the important matter of quantification of the claimed reserved water rights.

Several parties asked the Court to hold a prehearing conference to discuss how to proceed with the motion including scheduling of disclosures, discovery, briefing, and argument. To “ensure that all potentially affected claimants in both adjudications are given adequate notice of the relief requested and an opportunity to be heard,” the Court scheduled the joint status hearing. 🌻

## LITTLE COLORADO RIVER ADJUDICATION

### **ADWR FILES DRAFT SUPPLEMENTAL CONTESTED CASE HSR IN RE PHELPS DODGE CORPORATION (SHOW LOW LAKE) CONTESTED CASE NO. 6417-033-0060**

On July 1, 2004, the Arizona Department of Water Resources (ADWR) filed a Draft Supplemental Contested Case Hydrographic Survey Report (HSR). The Draft HSR is the first supplemental contested case HSR prepared by ADWR and the first HSR prepared in accordance with the 1995 amendments to the general stream adjudication statutes.

A supplemental contested case HSR is designed to update watershed file reports contained in a prior final HSR where the passage of time necessitates a supplement. The Draft HSR supplements and updates the watershed file report of Phelps Dodge Corporation's water right claims to Show Low Lake contained in the Final Silver Creek Watershed HSR (1990).


The report gives the background of this contested case, describes and analyzes Phelps Dodge's statement of claimant, reviews the unique considerations related to the use of the water diverted in Show Low Lake, summarizes the water uses and claims within the Morenci Mine Complex where the water is used, and proposes water right attributes for Phelps Dodge's claimed storage and diversion water rights from Show Low Lake.

The HSR suggests a new organizational format for the watershed file reports. It is 64 pages long and contains 19 tables, 15 figures, and 5 appendices. Copies of the HSR may be purchased from ADWR.

Parties and claimants in the Little Colorado River Adjudication can file comments to ADWR regarding content and formatting issues on or before October 1, 2004. The comments should assist ADWR to produce a practical and useful HSR for the limited scope of a contested case. In accordance with prior orders, comments shall not address the merits or attributes of any specific water right as these matters are reserved for later hearing.

Persons submitting comments must provide a copy to all persons listed on the mailing list for this case and on the Little Colorado River Adjudication Court-Approved Mailing List. Copies of these mailing lists are posted at <http://www.supreme.state.az.us/wm> on the *Court Approved Mailing Lists* page.

ADWR has been directed to consider all the comments and prepare a Final Supplemental Contested Case HSR which shall be filed on or before January 31, 2005.

Upon the filing of the final HSR, claimants will have 180 days to file objections, and the Special Master will commence proceedings to conclude this contested case. 

## **COURT WILL MEET WITH SETTLEMENT COMMITTEE**

Immediately following the joint status hearing set on October 1, 2004, at 1:30 p.m., the Court will meet with the Little Colorado River Adjudication Settlement Committee. The committee was appointed in Pretrial Order No. 1: Re: Conduct of Adjudication (April 24, 1987) in order “to meet and explore the settlement potential of this litigation.”

In its August 3, 2004, order, the Court stated that the following topics will be discussed at the meeting:

- a. Committee prospects for significant contribution to the meaningful settlement of claims.
- b. If the committee remains a viable entity, who should become or remain a committee member? Who should chair the committee?
- c. Means for providing for more aggressive informal resolution on non-Indian tribe federal claims.
- d. Methods for fostering resolution of claim disputes between Indian tribes.
- e. Consideration of a replacement settlement facilitator to promote informal resolution of claims, and the proper method of generating funds to cover the costs associated with use of a facilitator.

The meeting is part of the Court’s efforts to encourage productive settlement negotiations in the Little Colorado River Adjudication. 🌱

## **INTERIOR SECRETARY NORTON SIGNS ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 2003**

By Kathy Dolge<sup>3</sup>


Secretary of the Interior Gale Norton signed the Zuni Indian Tribe Water Rights Settlement Agreement on July 8, 2004. As reported in the May-August 2003 Online Arizona General Stream Adjudication Bulletin, the settlement act was signed into law by President Bush on June 23, 2003.

The settlement agreement resolves decades-long disputes among the Zuni Pueblo, northeastern Arizona communities and irrigation companies, utilities, the federal government, and the State of Arizona. Much of the dispute centered on Zuni religious lands near St. Johns, lands designated by Congress as “the Zuni Heaven Reservation” in 1984. All parties sought a legislative solution as a way to avoid lengthy and costly litigation.

Proceedings for approval of the settlement agreement will come before the adjudication court in due course, pursuant to the Arizona Supreme Court’s

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<sup>3</sup> Ms. Dolge is Assistant to the Special Master.

Administrative Order filed September 27, 2000. The federal Act requires all aspects of the settlement to be finalized no later than December 31, 2006. 

## GILA RIVER ADJUDICATION

### **COURT SETS CONFERENCE ON APPLICATIONS FOR PROVISIONAL INJUNCTIVE RELIEF**

On April 26, 2004, the Salt River Project (SRP) filed five applications for order to show cause and request for injunction against several water users in the Verde River Watershed.<sup>4</sup> SRP claims these water users do not have historic or appropriative water rights to divert and use surface water and subflow, or their claimed water rights are junior to SRP's vested surface water rights.

SRP asked the Court to issue an order requiring the water users to show why they should not be enjoined or stopped from using surface water and subflow of the Verde River Watershed and to permanently enjoin these persons from using the water. In legal terms, SRP has applied for provisional injunctive relief against these water users.

The majority of the respondents filed responses to the applications. The Cities of Phoenix and Tempe filed memoranda in support of SRP's applications. The Roosevelt Water Conservation District filed a partial joinder but argued that the Court should consider separating the issues related to subflow claims from the issues related to surface water claims because the Court is currently considering the procedures to apply to subflow uses.

The Cities of Casa Grande, Cottonwood, and Sedona, the Towns of Clarkdale and Jerome, the Gila Valley and Franklin Irrigation Districts, and the Maricopa-Stanfield and Central Arizona Irrigation and Drainage Districts also argued that while the Court may consider issues related to diversions of surface water it should not address any claims that would require making subflow determinations in the Verde River Watershed.

Mr. Ray Wrobley, Ms. Mary Margaret Kovacovich, Mr. John Kovacovich, and the Verde Ditch Company filed a response opposing the applications because "mini-adjudications" would promote "needless piecemeal and divisive multiple hearings," and all determinations should be made in the normal course and schedule of the Gila River Adjudication.

Other respondents opposed SRP's applications on the grounds that: (1) the applications are barred by the doctrine of laches; (2) the relative harm to

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<sup>4</sup> The respondents in the five applications are (1) Henry M. Shill and Don H. Shill dba Shield Ranch, Inc.; (2) Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, and if necessary and appropriate, the owners of the properties formerly listed as First American Title Trust No. 4693; (3) Linda S. Robinson, Paul R. Robinson, and Chester-Campbell, L.L.C.; (4) NBJ Ranch Limited Partnership; and (5) Josephine C. Leslie and Verde River Ranch, L.L.C.



other claimants in the adjudication outweighs SRP's need for relief; (3) considering the merits of SRP's applications will divert the Court from its original mission of adjudicating water rights by initiating a series of provisional remedy hearings; (4) the Court does not have the inherent authority to grant provisional injunctive relief; and (5) taking up SRP's applications would be contrary to the intent of the federal McCarran Amendment, 43 U.S.C. § 666, which requires comprehensive general stream adjudications.

The applications concerning the Shield Ranch and the NBJ Ranch involve water rights decreed by the Yavapai County Superior Court or the Territorial Court. The NBJ Ranch argued that its dispute with SRP must be heard in the Yavapai County Superior Court due to the existence of the prior judgment concerning these water rights.

On July 1, 2004, the Court held a status hearing to consider the applications for provisional injunctive relief. In an order filed on August 11, 2004, the Court stated as follows:

At the hearing, the Court informed the parties it rejects the notion that the adjudication court does not possess the authority to order injunctive relief. The Court also does not believe that, in this instance, holding hearings to determine whether provisional relief should be ordered would violate the grant of authority supplied by the McCarran Amendment. And in light of the fact there is only one Superior Court in Arizona, this division does not believe it is compelled to refrain from considering issues arising in this adjudication between parties to other state court judgments or litigation concerning water rights pending outside Maricopa County.

At the status hearing, a great amount of time was spent obtaining an avowal from SRP as to the scope of the relief requested. The Court is committed to ensuring that neither SRP nor any other claimant can avoid the general adjudication process and obtain judicial determination of the extent and priority of competing water rights claims on a preferential basis. The Court will not consider a request for provisional relief that requires it to decide factual or legal matters that might be used as precedent for resolving disputes involving claimants that will not be parties to the hearings on SRP's applications.

The court made clear that it would only consider setting a hearing on SRP's requests if SRP affirmed that it intends, as part of its efforts to demonstrate entitlement to a provisional remedy, to establish that the respondents do not possess colorable water right claims. There was a great deal of discussion during the hearing as to what constitutes a "colorable claim." For purposes of SRP's applications, a "colorable claim," at a minimum, includes water rights claims existing prior to and after June 12, 1919, for which

relevant filings or documentation were on file with the Arizona Department of Water Resources prior to the date SRP filed the applications.

The Court indicated that should these matters proceed and the Court subsequently finds there was not a good faith basis to assert that a respondent does not hold a colorable water rights claim, appropriate relief would be granted to any affected party.

“Based upon SRP’s avowal regarding the scope of the requests set forth in its applications for provisional injunctive relief,” the Court granted SRP’s request for evidentiary hearings to consider whether provisional injunctive relief should be granted against the respondent water users and scheduled a comprehensive pretrial conference “to consider any outstanding discovery disputes, proposals for scheduling the evidentiary hearings to be held, and any other relevant scheduling and case management matters.”

The pretrial conference will be held on October 1, 2004, at 10:00 a.m., in the Central Court Building, Courtroom 402, 201 West Jefferson, in Phoenix. The Court directed SRP to obtain service of process on the water users who had not filed responses.<sup>5</sup>

**SPECIAL MASTER SUBMITS REPORT ADDRESSING  
ADWR’S PROPOSED SUBFLOW PROCEDURES  
IN RE SUBFLOW TECHNICAL REPORT  
SAN PEDRO RIVER WATERSHED  
CONTESTED CASE NO. W1-103**

The Special Master has submitted his report to the Superior Court regarding the *Subflow Technical Report, San Pedro River Watershed* prepared by the Arizona Department of Water Resources (ADWR). The report, filed on July 16, 2004, addresses the objections filed to ADWR’s technical report in which the department recommended procedures to implement the subflow criteria and a cone of depression test in accordance with the Arizona Supreme Court’s *Gila II*<sup>6</sup> and *Gila IV*<sup>7</sup> decisions.

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<sup>5</sup> These respondents are Linda S. Robinson, Paul R. Robinson, Chester-Campbell, L.L.C., Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, and if necessary and appropriate, the owners of the properties formerly listed as First American Title Trust No. 4693.

<sup>6</sup> *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 175 Ariz. 382, 857 P.2d 1236 (1993) (“*Gila II*”).

<sup>7</sup> *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 198 Ariz. 330, 9 P.3d 1069 (2000), *cert. denied sub nom. Phelps Dodge Corp. v. U.S.*, 533 U.S. 941 (2001) (“*Gila IV*”). In *Gila II*, the Arizona Supreme Court remanded to the trial court, which after further hearings issued a ruling whose appeal to the Supreme Court resulted in *Gila IV*.

A well that is determined to be pumping subflow is subject to the adjudication. ADWR will make the initial subflow determinations regarding wells. In *Gila IV*, the Supreme Court defined the subflow zone as the saturated floodplain Holocene alluvium and set forth three tests to determine if a well is subject to the adjudication because it pumps subflow:

1. All wells located within the lateral limits of the subflow zone are subject to the adjudication;
2. All wells located outside the subflow zone that are pumping water from a stream or its subflow, as determined by ADWR's analysis of the well's cone of depression, are included in the adjudication; and
3. Wells that, though pumping subflow, have a *de minimis* effect on the river system may be excluded from the adjudication based on rational guidelines for such an exclusion as proposed by ADWR and adopted by the Superior Court.

The Special Master's 100-page report contains 39 recommendations addressing ADWR's proposed procedures to delineate the lateral limits of the subflow zone (19 recommendations), implement a cone of depression test (15 recommendations), and set rational guidelines for *de minimis* water uses (one recommendation), in addition to a schedule for implementing the procedures (4 recommendations). The Special Master considered the extensive evidence presented in the sworn declarations of 13 technical experts, 38 admitted exhibits, and during two days of hearings where the experts were cross-examined.

An electronic copy of the Special Master's report is posted at <http://www.supreme.state.az.us/wm/> on the *Gila River Adjudication* page under Contested Case No. W1-103. A printed copy can be purchased from the office of the Special Master for \$8.00 payable by check or money order.

Any claimant in the Gila River Adjudication may file a written objection to the Special Master's report on or before October 1, 2004. Responses to objections must be filed on or before November 1, 2004, and replies by December 1, 2004. Several parties requested additional time, and the Court extended the deadlines to these dates.

Each objection should identify the related recommendation. Objections, responses, and replies must be filed with the Clerk of the Maricopa County Superior Court, Attn: Water Case, 601 West Jackson Street, Phoenix, Arizona 85003. Copies of pleadings must be served personally or by mail on all persons listed in the report's certificate of service.

The hearing on the Special Master's motion to approve the report and on any objections to the report will be taken up as ordered by the Superior Court. The Court may adopt the report or modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. 🗑️

**SPECIAL MASTER HOLDS CONFERENCE  
FOR CONTINUATION OF CASE  
*IN RE PWR 107 CLAIMS*  
CONTESTED CASE NO. W1-11-1174**

On May 20, 2004, the Special Master held a status conference to determine the next proceedings in this contested case. The Arizona Department of Water Resources (ADWR) described the field investigations it has done. The United States indicated that the parties have had settlement discussions during the past year, and proposed abstracts of water right attributes have been exchanged among the parties. The United States has previously indicated that 30 of the 40 claims have been amended, and the remaining 10 claims will be withdrawn.

The Special Master wants to give the parties the opportunity to settle this case using the same procedures that resulted in the partial decrees entered in *In re Saguaro National Monument (Rincon Mountain Unit)* and *In re Coronado National Memorial*. During the next 90 days, the United States will confer with the other parties to determine if a settlement agreement covering all water right claims in this case can be reached.

This case addresses 16 watershed file reports (WFRs) contained in the Final San Pedro River Watershed Hydrographic Survey Report (1991) and the objections filed to those WFRs. In an order issued on May 24, 2004, the Special Master stated that:

[I]f the objections to the forty water right claims are resolved by settlement or dismissal of claims, ADWR will not need to prepare a supplemental contested case HSR. Because ADWR can review its water right records and other information, including that provided by the parties, related to these claims, the Special Master plans to direct ADWR to advise the Special Master of its recommendations regarding any settlement agreement. A comprehensive technical report is not contemplated but rather a review and recommendations regarding a settlement agreement. This direction will be made if a settlement agreement is reached.

The United States was ordered to file a report on the status of settlement negotiations on or before August 27, 2004. 🌻

**UNITED STATES FILES STATUS REPORT  
REGARDING NEW OR AMENDED CLAIMS  
*IN RE SPRNCA*  
CONTESTED CASE NOT YET INITIATED**

On June 1, 2004, the United States filed a status report describing the work done or in progress to prepare new or amended water right claims for the San Pedro Riparian National Conservation Area (SPRNCA) and the anticipated date of filing those claims. The August 2003 status report of the United States

was summarized in the September-December 2003 issue of the Online Arizona General Stream Adjudication Bulletin which is available on the *Online Bulletin* page at <http://www.supreme.state.az.us/wm>.

The United States has prepared reports on the natural hydrologic conditions of the river, collected and analyzed data on groundwater conditions within and near the SPRNCA, and examined the studies done on behalf of the Upper San Pedro Partnership Technical Committee, a group of experts directing studies in the Upper San Pedro River Basin on behalf of 21 agencies and organizations. Agencies conducting studies include the Agricultural Research Service of the U. S. Department of Agriculture, United States Geological Survey, Arizona State University, and the Universities of Arizona and Wyoming.

The Upper San Pedro Partnership, as described in its internet site at <http://www.uspppartnership.com> (double "p" in domain name), is a "consortium of 21 agencies and organizations working together to meet the water needs of area residents while protecting the San Pedro River" whose purpose "is to coordinate and cooperate in the identification, prioritization and implementation of comprehensive policies and projects to assist in meeting water needs in the Sierra Vista Sub-watershed of the Upper San Pedro River Basin." As stated in the Partnership's internet site:

Approximately 70,000 people share the Sierra Vista Sub-watershed with the San Pedro Riparian NCA, established by Congress in 1988 as the first such preserve in the nation. Without an adequate long-term water supply, neither the people of the area nor the river will thrive. That's why 21 agencies and organizations have come together through the Partnership to make sure the area's water needs are met - for both the San Pedro Riparian NCA and the people of the basin. Together, these governmental agencies and private organizations are making progress. Studies are under way, plans are being developed, projects are being implemented, and funding is coming to the basin to address water issues.

The United States reported that it "expects to amend its claims for water to include groundwater levels, point sources, revised claims to surface water, and consumptive use by vegetation." The Partnership has undertaken several studies "to examine how much and when water is needed by the riparian ecosystem along the Upper San Pedro River, the source of the water used by riparian vegetation, and the amounts of water consumed via evaporation from the river and vegetation use." A model has been developed that estimates in acre-feet evapotranspiration caused by plants in the riparian corridor. The model is being examined for use in quantifying the amount of water consumed by riparian vegetation.

The United States expects to claim groundwater levels necessary to conserve and protect the SPRNCA's natural resources and to provide water for administrative sites and purposes. Groundwater data is being collected, and

springs, seeps, ponds, and wells are being evaluated for inclusion in amended claims. The data will be used “to determine groundwater levels appropriate for the protection of the riparian community and flows in the river.”

Concerning surface water claims, the United States is nearing completion of planned amendments. The amendments may “include specific claims to water necessary to conserve, protect, and enhance the fish populations and fish habitat.” A report on natural hydrographic conditions will be submitted with the amended surface water claims.

The United States estimates that the analysis, application, and generation of amended water use claims for the SPRNCA’s non-consumptive and consumptive water needs “should take six months.” Accordingly, the United States “proposes a target deadline of January 1, 2005 to submit its amended claims,” and following their filing, “has no objection to the initiation of a contested case” to determine the claims. 