

Online ARIZONA GENERAL STREAM ADJUDICATION BULLETIN
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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)***

**SUPERIOR COURT APPROVES AND MODIFIES
SPECIAL MASTER’S REPORT ON PROCEDURES
FOR SUPPLEMENTAL CONTESTED CASE REPORTS**

The Superior Court approved and modified the Special Master’s Report on Issues of Broad Legal Importance Regarding Supplemental Contested Case Hydrographic Survey Reports Filed in the San Pedro River Watershed (“Special Master’s Report”).¹ The Court considered the comments, objections, and requests for clarification filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation (Apache Tribes); Arizona Water Company; Arizona Department of Water Resources (ADWR); Mr. Wayne D. Klump; and the United States.

The report addressed the procedures that ADWR will implement to notify claimants and parties when it publishes a supplemental contested case hydrographic survey report (HSR). The case proceedings were reported in the September-December 2002 issue of the *Bulletin*, and the Special Master’s recommendations were reviewed in the January-April 2003 *Bulletin*.

Comments, Objections, and Clarification Requests

The United States requested a clarification that “the recommended notice and service procedures will apply to all claims in the San Pedro River Watershed and that all claimants will have renewed opportunity to object to all water claims for the subwatershed when ADWR issues new recommendations in supplemental contested case HSRs.” The Court clarified that “Any identified water use change and all new uses reported in a supplemental contested case HSR will be subject to objection pursuant to A.R.S. § 45-256(B).”

With respect to another of the United States’ requests, the Court agreed that “subflow zone determinations are a requisite to issuance of supplemental contested case HSRs relating to the San Pedro River Watershed,” but “did not

¹ The complete report is available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication (In re PWR 107 Claims)*.

agree that the Court should, as part of its review of the Special Master's Report, specifically delineate each issue to be addressed by ADWR in supplemental contested case HSRs." Judge Ballinger found that the report did not address this issue, and "the affected parties should have the opportunity to comment on the question before the Court provides direction to ADWR."

The Court agreed "with ADWR that the department should be permitted to submit a draft of the first supplemental contested case HSR, which conforms to the requirements of A.R.S. § 45-256(B), for comment by the parties." Before the first supplemental contested case HSR is filed, claimants and parties will have an opportunity to comment on the HSR's content and formatting.

The Arizona Water Company suggested that the Court amplify the use of the 120-day notice to reach more claimants. The Court did not accept the suggestion, finding that Pretrial Order No. 5 Re: Notice of Hydrographic Survey Reports, "as clarified by this order, provides adequate notice to parties interested in, or potentially affected by, the supplemental reports described in the Special Master's Report."

Judge Ballinger approved ADWR's recommendations that "the Special Master's notice, described in Recommendation 5 of the report, contain information regarding a claimant's responsibility to notify ADWR of changes of address or ownership as required by Pretrial Order No. 4 Re: Notification and Correction of Address Changes and that it be sent together with ADWR's notice of filing of the first supplemental contested case HSR." Responding to ADWR's concerns about inaccuracies in the mailing lists and future legislative funding for its technical work in the adjudications, the Court encouraged "ADWR to continue its efforts to update its databases using all means available and to seek the necessary funding to permit it to fulfill its notification responsibilities."

The Court agreed with the Apache Tribes' suggestion that "due process for all parties will be enhanced if recipients of the notice of the first supplemental contested case HSR are made aware that they may elect to receive notice of

subsequent supplemental contested case HSRs by requesting to be placed on a mailing list maintained by ADWR.”

The Court’s Order

After finding that notice of the report was given as required by law, prior court orders, and the Rules for Proceedings Before the Special Master, Judge Ballinger:

1. Accepted the findings of fact and conclusions of law as set forth in the Special Master’s Report.

2. Adopted all the recommendations and their supporting reasons as set forth in the report. The 13 recommendations are:

A. A preliminary supplemental contested case HSR is not required prior to the filing of any supplemental contested case HSR.

B. The procedures set forth in Pre-Trial Order No. 1 ¶ 12(D)(1 and 2) are not adopted for supplemental contested case HSRs.²

C. All claimants in the Gila River Adjudication shall be notified of the filing of supplemental contested case HSRs in the San Pedro River Watershed.

D. Upon filing the first supplemental contested case HSR in the San Pedro River Watershed, ADWR is directed to send a copy of the objection notice by first-class mail to the persons included on the mailing list for the contested case, to persons appearing on the Court-approved mailing list, to each claimant and nonclaimant water user in the San Pedro River Watershed, to all persons who filed objections to the Final San Pedro River Watershed HSR (1991), and to every other claimant in the Gila River Adjudication.

E. Upon ADWR filing the first supplemental contested case HSR in the San Pedro River Watershed, the Special Master is directed to send a notice informing all claimants in the Gila River Adjudication that other supplemental contested case HSRs will be filed in the San Pedro River Watershed, but notice of future supplemental contested case HSRs filed in the San Pedro River Watershed will be sent by first-class mail only to the persons included on the mailing list for the contested case, to persons appearing on the Court-approved mailing list, to each claimant and nonclaimant water user in the San Pedro River Watershed, and to all persons who filed objections to the Final San Pedro River Watershed HSR

² Pretrial Orders Nos. 1 through 5 are available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication*.

(1991). This notice should include, if available, a description and filing schedule for future supplemental contested case HSRs in the San Pedro River Watershed and other relevant information about the Gila River Adjudication.

F. For subsequent supplemental contested case HSRs filed in the San Pedro River Watershed, ADWR is directed to send a copy of the objection notice by first-class mail to the persons included on the mailing list for the contested case, to persons appearing on the Court-approved mailing list, to each claimant and nonclaimant water user in the San Pedro River Watershed, and to all persons who filed objections to the Final San Pedro River Watershed HSR (1991).

G. The procedures set forth in Pretrial Order No. 5 ¶¶ 3 and 5(B)(C)(E) and (F) are adopted for all supplemental contested case HSRs.

H. At least 120 days before a supplemental contested case HSR is filed in the San Pedro River Watershed, ADWR shall file a notice with the Clerk of the Superior Court. This 120-day notice shall state the date on which the supplemental contested case HSR is to be filed and the deadlines for filing a new statement of claimant or amendment to an existing statement of claimant as provided by A.R.S. § 45-254. ADWR shall send a copy of the 120-day notice by first-class mail to all persons listed on the mailing list for the contested case, to persons appearing on the Court-approved mailing list, and to all claimants and nonclaimant water users in the subwatershed or subwatersheds of the major watershed covered by the supplemental contested case HSR.

I. All claimants in the Gila River Adjudication shall be allowed to file objections to any supplemental contested case HSR filed in the San Pedro River Watershed.

J. Any claimant may file written objections to a supplemental contested case HSR or any part of the report, filed in the San Pedro River Watershed, within one hundred eighty days of the date on which the report was filed.

K. The requirements for objections to a final HSR contained in Pre-Trial Order No. 1 ¶ 12(D)(3)(a)(b) and (c) are adopted for objections to all supplemental contested case HSRs.

L. The procedures set forth in Pretrial Order No. 5 ¶ 7(B) and (C) are adopted for all supplemental contested case HSRs.

M. Objections to supplemental contested case HSRs filed in the San Pedro River Watershed shall not be limited in any manner to the supplemental information reported in the HSR.

3. Directed that when the first San Pedro River Watershed supplemental contested case HSR is filed, ADWR “shall send the persons included on the mailing list for the contested case, persons appearing on the Gila River Adjudication Court-Approved Mailing List, each claimant and nonclaimant water user in the San Pedro River Watershed, all persons who filed objections to the Final San Pedro River Watershed HSR (1991), and every other claimant in the Gila River Adjudication a written notice providing a mechanism that permits a claimant or person to request to be placed on a mailing list, maintained by ADWR, to be notified whenever a supplemental contested case HSR is filed. The notice shall state that a claimant or person can elect, at any time, not to receive any further notice of the filing of a supplemental contested case HSR by advising ADWR in writing, and that a claimant or person requesting to be placed on this mailing list shall notify ADWR, within thirty (30) days of the change, of any of the following changes regarding that person or concerning that person’s statement of claimant form: (1) a change in that person’s address; (2) an assignment of the statement of claimant form to another person; (3) a transfer to another person of all or part of the land for which a water right has been claimed; and (4) a transfer to another person of all or part of the water right claimed, if the claimed water right has been severed and transferred to another parcel of land. ADWR may provide any other information that would benefit claimants or help ADWR in subsequent notifications.”

4. Directed ADWR to provide a draft of the first supplemental contested case HSR for review by the parties listed on the Court-approved mailing list, with an opportunity for comment, so that content and formatting issues may be addressed. The Court cautioned, “This process should not delay the finalization of the first supplemental contested case HSR.”

5. Directed the Special Master to incorporate the notice procedures described in Recommendation 5 of the report together with ADWR’s notice of filing of the first supplemental contested case HSR. “The Special Master’s notice shall reflect claimants’ responsibility to notify ADWR of changes of address or

ownership changes as required under Pretrial Order No. 4 Re: Notification and Correction of Address Changes. The information regarding claimants' responsibilities under Pretrial Order No. 4 shall be publicized frequently."

6. Dismissed Mr. Wayne D. Klump's objection after finding that it did not relate to the matters in the report.

7. Granted the Special Master's motion to approve the recommendations contained in the report subject to the foregoing modifications.

8. Directed ADWR to notify claimants and others of the filing of a supplemental contested case HSR in accordance with these determinations.

9. Provided that these procedures shall apply in the Gila River Adjudication, and the Court and the Special Master may consider implementing them in the Little Colorado River Adjudication.

Objection Filed to Proposed Order

On October 30, 2003, the Special Master lodged with the Court a proposed order based on the Court's rulings. Parties were allowed to file objections to the proposed order. The Arizona Water Company filed an objection.

The company objected that the term "nonclaimant water user" is not defined in the Special Master's Report, the Court's order, or in the proposed order, and suggested that the term be defined to mean water users who "own or control a source of water located in the Subwatershed to which [ADWR's] activities relate, and have not filed a statement of claimant on that or some other water source in the Gila River Watershed, and specifically to rule that mere use of water from a municipal water provider's system is insufficient to entitle that water user to individual notice."

The term is defined in Pretrial Order No. 5, but the suggested clarification, according to the company, would result in savings of notification expenses. It is not known when the Court will rule on the objection. 🍌

LITTLE COLORADO RIVER ADJUDICATION

SUPERIOR COURT JUDGE MICHAEL C. NELSON RESIGNS

On October 23, 2003, Superior Court Judge Michael C. Nelson resigned as Judge of the Apache County Superior Court after over 14 years of service. Judge Nelson had served as the settlement judge in the Little Colorado River Adjudication since 1994, when Judge Allen G. Minker, then the Superior Court judge assigned to the adjudication, asked Judge Nelson to assist with settlement. Judge Nelson provided invaluable assistance, high energy, and productive guidance to the settlement efforts. Judge Nelson's contributions are evident in the recent settlement of the water rights of the Zuni Indian Tribe. Judge Nelson also served as a settlement judge for a portion of the Gila River Adjudication. The Court and the Special Master wish Judge Nelson the best in his professional endeavors.

On December 23, 2003, Governor Napolitano appointed Apache County Superior Court Judge Pro Tem Donna J. Grimsley to replace Judge Nelson. 🗑️

ADWR REQUESTS ADDITIONAL TIME TO FILE REPORT IN RE PHELPS DODGE CORPORATION (SHOW LOW LAKE) CONTESTED CASE NO. 6417-033-0060

On December 10, 2003, the Arizona Department of Water Resources (ADWR) requested additional time to file the supplemental contested case hydrographic survey report (HSR) for the water right claims of Phelps Dodge Corporation (Phelps Dodge) to Show Low Lake. The claims are based on a certificate of water right issued by the State of Arizona to Phelps Dodge. The supplemental HSR was due on December 31, 2003.

ADWR wants clarification from the Special Master or the Court regarding the applicability of the procedures recently adopted by the Court for notifying claimants and parties when a supplemental contested case HSR is filed. The procedures are described in the article *Superior Court Approves and Modifies Special Master's Report on Procedures for Supplemental Contested Case Reports* found on page 2. ADWR wants clarification as to whether the recently

adopted procedures will be implemented in the Little Colorado River Adjudication. The department also requested more time to obtain and analyze additional information regarding Phelps Dodge's water right claims to Show Low Lake. ADWR requested 60 days from the date of an order from the Special Master or the Court clarifying the procedures that the department should follow in this case, or February 27, 2004, whichever is later. 🌻

GILA RIVER ADJUDICATION

COURT HEARS LONG STANDING MOTIONS

On November 14, 2003, the Superior Court heard oral arguments on two motions filed by the Apache Tribes before the Gila River Adjudication was stayed in 1995. The first motion (the "full appropriation motion") asks the Court to declare and determine that the Gila River System and Source, now under adjudication, is fully appropriated and to direct the Arizona Department of Water Resources (ADWR) to carry out its regulatory duties in accordance with a legal determination of full appropriation of the river system. The second motion (the "motion to implement statutes") asks the Court to direct ADWR to implement statutes dealing with the regulation of irrigation ditches, canals, and reservoirs; dams under ADWR's jurisdiction; and the administrative process for determining abandoned or forfeited surface water rights.

The motions were filed in April and March 1995, but in order to address other issues, the Court stayed both motions until February 2003, when Judge Ballinger set them for briefing and hearing. The Apache Tribes were allowed to amend or withdraw the motions. In March 2003, the Tribes filed amendments to both motions. Other parties were allowed to file responses or amend their previously filed responses.

The full appropriation motion argues that there is state and federal case law precedent supporting a determination that the water resources in the area under adjudication have been fully appropriated for more than twenty years; that ADWR continues to issue a variety of surface water and groundwater rights in

large numbers and without effective notice and opportunity to object; and the issuance of new water rights prejudices claimants and water right holders in the adjudication, both in terms of water quantity and water quality.

The motion to implement statutes asks the Court to direct ADWR to implement the statutes that require owners of irrigation ditches, canals, and reservoirs to install measuring devices and head gates and record and report their diversions of water; to implement the statutes that regulate the construction, operation, and maintenance of dams under the statutory jurisdiction of ADWR; and to implement the statutes that provide an administrative process for the relinquishment of abandoned or forfeited surface water rights.

The responses argue that the Adjudication Court does not have jurisdiction over ADWR in this matter because ADWR is not a claimant or party in the adjudication but is the Court's technical advisor; the Court does not have jurisdiction to direct ADWR how the department should carry out its statutory duties and responsibilities; if the Court attempts to do so, it would violate the constitutional separation of powers; ADWR has appropriately exercised its statutory duties contrary to the assertions made in the motions; the case law precedents claimed to support the full appropriation motion do not do so; the Adjudication Court has not yet determined the location of the subflow zone or adopted a cone of depression test that will impact how ADWR regulates water rights; and the motions are not the proper means to obtain the requested relief.

Oral arguments on these important issues lasted nearly two hours. It is not known when the Court will rule on the motions. 🌻

**SPECIAL MASTER HEARS SUBFLOW ISSUES
IN RE SUBFLOW TECHNICAL REPORT
SAN PEDRO RIVER WATERSHED
CONTESTED CASE NO. W1-103**

Over two full days on October 21 and 22, 2003, Special Master Schade heard the issues arising from the Arizona Department of Water Resources' (ADWR) *Subflow Technical Report, San Pedro River Watershed* and the objections filed to the report.

Proposed Rulings Announced Prior to the Hearing

Prior to the hearing, the Special Master announced proposed rulings on four issues whose resolution would focus the cross-examination of witnesses.³ On September 7, 2003, the Special Master issued the following proposed determinations for the four issues:

Issue 1: Should ADWR's subflow analysis consider predevelopment or current stream flow conditions? The proposed ruling is:

1. ADWR's subflow analysis shall consider predevelopment stream flow conditions.
2. The date of predevelopment shall be a chronological year or a range of years immediately prior to widespread diversion and depletion of the stream's flows as a result of any human activity.

Issue 2: Should ADWR consider the criteria specified in *Gila IV*⁴ to identify the subflow zone or have the criteria already been taken into account in the Arizona Supreme Court's holding that the saturated floodplain Holocene alluvium is the subflow zone?

1. The criteria specified in *Gila IV* to identify or delineate the subflow zone have already been taken into account in the Arizona Supreme Court's holding that the saturated floodplain Holocene alluvium is the subflow zone.
2. If ADWR is unable by using the means it proposes to identify or delineate the subflow zone in a stream segment, ADWR is directed to use the criteria specified in *Gila IV* and any other relevant factors that are appropriate for the particular location to delineate the subflow zone.

Issue 3: In addition to analyzing a well's drawdown at the subflow zone, should ADWR report the cumulative effect of wells or of groups of wells?

1. A well's drawdown at the subflow zone shall be analyzed individually for each well.

³ The order is available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication (In re Subflow Technical Report, San Pedro River Watershed)*.

⁴ *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*"). *Gila IV* is the Arizona Supreme Court's decision that triggered the determination of the subflow issues the Special Master is hearing.

2. The Special Master will not decide in this order whether ADWR should report the cumulative effect of wells or of groups of wells. A ruling will be made after considering the evidence presented at the October hearing.

Issue 4: Should ADWR's findings be reported in supplemental contested case hydrographic survey reports (HSRs) ("case-by-case") or in a supplemental San Pedro River Watershed HSR ("the entire watershed"), which identifies the subflow zone, wells reaching and depleting a stream, and *de minimis* water rights?

1. The Special Master recommends the following schedule for the San Pedro River Watershed:

A. After the Superior Court adopts or modifies the Special Master's report recommending the procedures and processes to delineate the subflow zone within the San Pedro River Watershed and a cone of depression test, ADWR is directed to prepare a map delineating the subflow zone for the entire San Pedro River Watershed. ADWR shall submit this map and related information in a technical report and not in any form of HSR. The scope of the technical report shall be limited to delineating the subflow zone.

B. Upon filing its technical report with the Superior Court, ADWR shall send a notice to all claimants in the San Pedro River Watershed and the parties listed in the Gila River Adjudication Court-Approved Mailing List informing them of the scope and availability of the report and of a claimant's right to file written objections to the report and of the deadline for filing objections.

C. Any claimant in the San Pedro River Watershed may file a written objection to ADWR's technical report within 120 days of the date on which the report was filed. Objections shall be limited to ADWR's findings regarding the subflow zone.

D. After considering the objections, the Superior Court will approve the map that delineates and establishes the subflow zone for the San Pedro River Watershed.

E. Using the cone of depression test adopted by the Superior Court, ADWR will analyze wells located outside the lateral limits of the subflow zone to determine if the well's cone of depression reaches an adjacent subflow zone, and if continuing pumping will cause a loss of such subflow as to affect the quantity of the stream. ADWR will examine the other water right claims to determine *de minimis* water rights in the San Pedro River Watershed in accordance with the Superior Court's

September 26, 2002, order.⁵ ADWR will investigate and supplement, as needed, its findings reported in the 1991 Final San Pedro River Watershed HSR.

F. ADWR publishes a Supplemental Final San Pedro River Watershed HSR reporting its findings on a claim by claim basis, in accordance with A.R.S. § 45-256(B), including wells withdrawing subflow, cone of depression analyses, *de minimis* water rights, and all other updated information.

G. ADWR shall send a notice of the filing of the Supplemental Final San Pedro River Watershed HSR to all claimants in the Gila River Adjudication, who may file objections within 180 days of the date on which the report was filed.

2. The Special Master will direct ADWR to file the supplemental contested case HSR for *In re Fort Huachuca* after the Superior Court has approved the map delineating the subflow zone for the San Pedro River Watershed.

3. The Special Master recommends that this schedule be adopted for all the watersheds in the Gila River Adjudication subject to modifications that may be proper as a result of experience with this process.

These proposed rulings might be modified in accordance with relevant testimony, credible evidence, or persuasive argument presented during the examination of witnesses. The final rulings will be contained in the Special Master's report that will be filed with the Superior Court.

The Cross-Examination of the Expert Witnesses

The parties who submitted sworn and rebuttal declarations conducted the cross-examination of the 13 expert witnesses and ADWR staff who testified. The following parties, through their counsel, conducted cross-examination of the expert witnesses:

1. The Apache Tribes
2. Arizona Public Service Company and Phelps Dodge Corporation
3. Bella Vista and Pueblo Del Sol Water Companies
4. BHP Copper, Inc.
5. Cities of Chandler, Glendale, Mesa, and Scottsdale

⁵ The order is available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication (Judge Eddward P. Ballinger, Jr.)*.

6. Gila River Indian Community
7. Gila Valley and Franklin Irrigation Districts
8. Wayne D. Klump
9. Mary Margaret and John Kovacovich and Ray Wrobley
10. City of Safford; Paloma Ranch Investments, Inc.; Rio Rico Properties, Inc.; and Tonopah Irrigation District
11. Salt River Project
12. City of Tucson, and the
13. United States.

The expert witnesses who testified were:

1. Errol L. Montgomery, Ph.D., P.G. for BHP Copper, Inc.
2. Oliver S. Page, R.G. for the United States
3. W. Gerald Matlock, P.E., Ph.D. for the Gila Valley and Franklin Irrigation Districts
4. Jon R. Ford for the Salt River Project
5. Philip C. Briggs, P.E. for Mary Margaret and John Kovacovich and Ray Wrobley
6. T. Allen J. Gookin, P.E., R.L.S., P.H. and Peter A. Mock, Ph.D., R.G. for the Gila River Indian Community
7. Eric J. Harmon, P.E. for Arizona Public Service Company and Phelps Dodge Corporation
8. Doug Toy, P.E. for the Cities of Chandler, Glendale, Mesa, and Scottsdale
9. Michael J. Lacey for the Bella Vista and Pueblo Del Sol Water Companies, and
10. Ralph P. Marra, Jr. for the City of Tucson.

ADWR's technical staff that prepared the *Subflow Technical Report* was cross-examined and presented direct testimony on the department's proposal to use soil surveys (which is explained below). Mr. Richard T. Burtell, R.G., and Mr. Dale A. Mason testified on behalf of the department.

The cross-examination of witnesses addressed, but was not limited to, the following matters raised by the *Subflow Technical Report* and the objections:

Location of Subflow Zone

1. Are ADWR's recommendations for locating perennial, intermittent, and effluent-fed streams valid?
2. Does ADWR's recommendation that the entire lateral extent of the floodplain Holocene alluvium be assumed to be saturated comport with *Gila IV*?
3. Is ADWR's recommended assumption for effluent-fed streams "that the sediments immediately beneath these reaches are unsaturated due to clogging layers" valid?⁶
4. Are ADWR's recommendations sufficient to identify and exclude tributary aquifers and basin fill saturated zones?

Cone of Depression Test

1. Does ADWR's recommended drawdown of greater than or equal to 0.1 foot, where the cone of depression has reached the edge of the subflow zone, comport with *Gila IV*?
2. Does ADWR's recommended condition that the water level in a well be below the water level in the subflow zone during pumping comport with *Gila IV*?
3. What is the accuracy and reliability of analytical (THWELLS) and numerical (MODFLOW) models for the cone of depression test?
4. Is ADWR's recommendation that the impact of a well be measured "at the time of the modeling" scientifically valid?⁷
5. Should ADWR recommend a methodology to evaluate the impact of wells perforated below an impervious formation within the limits of the subflow zone?

After the Hearing

Before the hearing concluded, the Special Master granted a request to allow parties to file sworn and rebuttal declarations regarding ADWR's proposal to use soil surveys and maps, prepared under the auspices of the Natural Resources Conservation Service, to locate the subflow zone. ADWR's proposal,

⁶ ADWR's *Subflow Technical Report, San Pedro River Watershed* 9.

⁷ *Id.* at 31.

filed on September 25, 2003, described the soil surveys and how it proposed to use them.

The soil surveys would be used, instead of previously identified maps, to delineate the lateral extent of the subflow zone. Soil surveys will soon be available for the San Pedro River Watershed, and in subsequent years, for other areas of the Gila River Adjudication. At the hearing, ADWR presented additional explanations of its proposal.

Parties were given until December 8, 2003, to file sworn declarations, which like the initial declarations filed in this proceeding, will serve as the direct testimony of the expert witnesses should a hearing be held. Arizona Public Service; Phelps Dodge Corporation; BHP Copper, Inc.; the Cities of Chandler, Glendale, Mesa, and Scottsdale; Gila River Indian Community; Salt River Project; and the United States filed declarations.

The Gila Valley and Franklin Irrigation Districts, Towns of Clarkdale and Jerome, and the Cities of Casa Grande, Cottonwood, and Sedona joined in the declaration filed by Arizona Public Service and Phelps Dodge Corporation and filed a motion requesting an opportunity to cross-examine Mr. Burtell from ADWR and second, to present legal arguments addressing ADWR's proposed use of soil surveys and maps and the positions of the parties regarding the procedures ADWR will use to delineate the subflow zone in the San Pedro River Watershed. At press time, the time for filing responses to the motion had not passed.

On or before January 12, 2004, parties may file rebuttal declarations. Rebuttal declarations shall be under oath, limited to rebutting the opinions or information contained in the sworn declarations filed on or before December 8, 2003, and shall not present any new matters not contained in those declarations.

The Special Master may set a hearing should one be deemed helpful to understand the evidence or to determine a fact in issue. 🌻


**OBJECTION FILED TO MASTER’S REPORT ON THE
SETTLEMENT OF CLAIMS OF THE UNITED STATES
IN RE CORONADO NATIONAL MEMORIAL
CONTESTED CASES NO. W1-11-556 and W1-11-1132**

On May 15, 2003, Special Master Schade filed with the Court his recommendations for approving two stipulated agreements involving the water right claims of the United States within the Coronado National Memorial. The Special Master recommended the approval of stipulated abstracts of water rights for 24 claims of the United States and the withdrawal of four claims. A summary of the report is found in the May-August 2003 issue of the *Bulletin*.⁸

The Bella Vista and Pueblo del Sol Water Companies filed an objection to the report. The companies asked the Superior Court to provide that the approval of the stipulations shall have no effect as precedent:

1. “In this or in any other pending or future general stream adjudication or case relating to the legal issues regarding the basis or attributes of these water rights or any other water rights,” and
2. “In the event of a severance and transfer of the water rights, including changing the place or character of the use of the water, or changing the point of diversion; any such severance and transfer shall be subject to this Court’s jurisdiction and approval.”

It is not known when the Court will rule on this objection.

The Coronado National Memorial is a federal reservation of land in the San Pedro River Watershed administered by the National Park Service. The stipulated agreements address the objections filed to the water right claims of the United States reported in the 1991 Final San Pedro River Watershed Hydrographic Survey Report. 

⁸ The complete report is available at <http://www.supreme.state.az.us/wm/> on the page titled *Gila River Adjudication (In re Coronado National Memorial)*.

**UNITED STATES FILES STATUS REPORT
REGARDING THE SAN PEDRO RIPARIAN
NATIONAL CONSERVATION AREA**

On August 29, 2003, the United States filed a status report regarding its water right claims for the San Pedro Riparian National Conservation Area ("SPRNCA"). ASARCO Incorporated and BHP Copper, Inc. filed comments in response to the report. The SPRNCA is a federal reservation of land located within the San Pedro River Watershed. A contested case for the determination of these claims has not been initiated.

The United States reported that it is refining its instream water claims "to the natural hydrologic conditions that existed in 1988" (the year the SPRNCA was established), "reexamining its claims to groundwater," and "studying the aquatic habitat of the river and is modeling the effect of various hydrologic conditions on aquatic fauna." Technical studies are being conducted with other agencies and with Arizona State University.

These studies are expected to be completed in the spring of 2004. After reviewing, evaluating, and possibly incorporating the studies in the quantification of the SPRNCA water rights, the United States anticipates being prepared to file amended claims in the fall of 2004. Once the amended claims are filed, the United States "has no objection to the initiation of a contested case and proceeding with the litigation of its claims," although it "reserves the right to argue whether jurisdiction is proper and to raise any other defenses that may be appropriate once the contested matter is initiated."

ASARCO Incorporated and BHP Copper, Inc. commented that a decision to initiate a contested case should be made after the amended water right claims are filed, and interested claimants have had an opportunity to review the nature and scope of the amended claims.

The Special Master has requested the United States to file by June 1, 2004, a status report describing the work completed or in progress to prepare new or amended claims and indicating an anticipated date for their filing. 🌻

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From the first issue (April 1993) through 1997, the *Bulletin* was published 10 times each year (monthly, except July and December). From January 1998 to July 2000, the *Bulletin* was published quarterly. After that time, printed editions were published for August-December 2000 and January-May 2001. The first online edition was dated June-August 2001. Subsequent issues will be published only online in January, May, and September (or more frequently as events warrant). All issues since October 1996 are available on our Web site; contact the Office of the Special Master for earlier issues.

Previous indexes are in the following issues: April 1995, April 1996, April/May 1997, April-July 1998, March/April 1999, April-July 2000, and September-December 2001.

Most issues contain articles titled “Gila River Proceedings” and “Little Colorado River Proceedings.”

Arizona Supreme Court Amends Rule Relating to Practice by Attorneys Not Admitted in Arizona

May-August 2002

Court Approves and Modifies Special Master’s Report on Procedures Related to Supplemental Contested Case Reports (Contested Case No. W1-11-1174)

September –December 2003

Court Sets Priorities for ADWR’s Reports (in both adjudications)

January-April 2003

Court Visits New ADWR Director Herb Guenther

January-April 2003

Dividing the Waters Project

January-April 2002

Gila River Proceedings:

Court Draws Road Map for Gila River Adjudication

January-April 2003

Court Hears Long Standing Motions

September-December 2003

Gila River Indian Community Water Rights Settlement

January-April 2003

Gila River Indian Reservation Final HSR

January-April 2002, May-August 2002

In re Coronado National Memorial, Contested Case No. W1-11-556

September-December 2001, January-April 2002, May-August 2002, January-April 2003, May-August 2003, September-December 2003

In re Fort Huachuca, Contested Case No. W1-11-605

September-December 2001, January-April 2002, May-August 2002

In re the Preclusive Effect of the Globe Equity Decree on Specified Parties, Contested Case No. W1-206

September-December 2001, January-April 2002

In re PWR 107 Claims, Contested Case No. W1-11-1174

January-April 2002, May-August 2002, September-December 2002, January-April 2003, September-December 2003

In re Sands Investment Company, Contested Case No. W1-11-19 (de minimis issues)

September-December 2001, September-December 2002

In re the Water Rights of the Gila River Indian Community, Contested Case No. W1-203

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San Carlos Apache Tribe's Motion to Alter or Amend Judgment re Contested Case No. W1-206 is Denied

May-August 2002

San Pedro Riparian National Conservation Area (SPRNCA)

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Senators Kyl and McCain Introduce Bill to Settle Tribal Water Claims

September-December 2002

Interlocutory Review Issues:

Arizona Supreme Court Answers Issue No. 3

September-December 2001

Arizona Supreme Court Denies Reconsideration of Issue No. 3
January-April 2002

Arizona Supreme Court Vacates Issue No. 6
January-April 2002

Petitions Filed re Contested Case No. W1-203
May-August 2002

Petitions for Interlocutory Review (W1-203 and W1-206) Under Consideration by Arizona Supreme Court
September-December 2002

Invitation for Submissions for Web Site
September-December 2001

Joint Legislative Committee Appointed
May-August 2003

Legislature Amends Statute Regarding Use of Claimants' Filing Fees
May-August 2002

Little Colorado River Proceedings:

In re Phelps Dodge Corp. (Show Low Lake), Contested Case No. 6417-033-0060

September-December 2002, January-April 2003, May-August 2003, September-December 2003

Judge Dawson Issues Protective Order
January-April 2002

Judge Eddward P. Ballinger, Jr., Appointed
January-April 2002

Judge Edward L. Dawson Retires
September-December 2001

Reimbursement of Settlement Expenses
January-April 2002

Status Conferences
September-December 2001, January-April 2002, May-August 2002, September-December 2002, May-August 2003

Zuni Indian Tribe Settlement Agreement
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New Use Summons

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People in the Bulletin:

ADWR Director Joseph C. Smith Retires; State Senator Herb Guenther Selected

September-December 2002

Justice Stanley G. Feldman Retires

September-December 2002

Vice Chief Justice Ruth V. McGregor will Participate in Adjudication Proceedings

September-December 2002

Superior Court Judge Michael C. Nelson Resigns

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Water Lawyer Jack Schaper Retires

January-April 2002

Subflow Technical Report (San Pedro River), Contested Case No. W1-103:

ADWR Files Reports on its Proposals for Determining Subflow Criteria

September-December 2001, January-April 2002

Claimants Comment on ADWR's Subflow Report

May-August 2002

Special Master Addresses Subflow Issues

January-April 2003, May-August 2003, September-December 2003

Updating Mailing Addresses and Statements of Claimant

September-December 2001

Well Registration Records Online

September-December 2001

***West Maricopa Combine, Inc. v. ADWR* – Update**

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