

**Arizona General Stream Adjudication Bulletin
August 1997**

**Office of the Special Master
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The information contained in this Bulletin is provided for informational and scheduling purposes only, and does not constitute a legal opinion by the Special Master on matters contained herein.

**John E. Thorson, Special Master
Kathy Dolge, Assistant to Special Master
Volume 5, Number 5**

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Supreme Court Schedules Briefing

The Arizona Supreme Court has scheduled proceedings for the final phase of the "special action" challenge to adjudication-related legislation passed by the Arizona legislature in 1995. On July 28, staff attorneys from the court met with parties intending to participate in this phase of the case, and a written

scheduling order was issued by Chief Justice Thomas Zlaket on Aug. 1 and amended on Aug. 13, 1997

The statutes being reviewed, HB 2193 and HB 2276, were challenged shortly after passage by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Tribe. The Tribes brought their case as a special action proceeding before the Supreme Court. The Court, however, assigned the challenge to Superior Court Judge Susan R. Bolton for an initial decision. Judge Bolton's decision in August 1996 upheld portions of the laws, struck down other provisions, and indicated that still other sections could only be applied prospectively. Several of the parties petitioned the Supreme Court to review Bolton's decision, and the court agreed to do so (*see July 1997 Bulletin*).

The Supreme Court's amended scheduling order calls for opening briefs to be filed by Oct. 20, 1997. The Apache Tribes, Salt River Project, Navajo Nation, Phoenix-area cities, and the Phelps Dodge Corp. have been given specific permission to file opening briefs. Other parties generally aligned with the Apache Tribes, Salt River Project or Navajo Nation may file supplemental briefs by Nov. 17, 1997, if they believe their own position "is not presented adequately" in the lead brief of their ally. Parties filing opening briefs may file answering briefs by Jan. 12, 1998. In addition, the United States has been given permission to file an answering brief.

The scheduling order indicates that oral argument in the case will take place in March 1998. A pre-argument conference will be held at 10 a.m. on Feb. 10, 1998, at the Supreme Court.

Service List Available

In announcing the briefing schedule for the special action, above, the Arizona Supreme Court indicated that "copies of all briefs shall be served on every party that has filed a notice of appearance in connection with this certification, the trial court in the Gila River adjudication, the trial court in the Little Colorado River adjudication, the Special Master and the Department of Water Resources." The Supreme Court's order, however, did not include a list of persons.

The office of the Special Master has compiled a service list based on this language from the Court's order. This list may be obtained by calling the office of the Special Master. The list may also be found in the Special Master's area on the Arizona Judicial Department/Arizona Supreme Court Web site: <http://www.state.az.us/sp/stream2.htm>

Little Colorado River Proceedings

For the past month, the parties attempting to reach a major settlement in the Little Colorado River adjudication have held negotiating sessions and other meetings in Albuquerque, Phoenix, and Pinetop. Additional sessions are planned for early September. The negotiators were scheduled to submit a progress report to Judge Allen Minker, presiding judge for the Little Colorado River adjudication, by August 8 and an additional report to him by September 19. The next hearing on the status of the negotiations has been set for 9:30 a.m. on Friday, September 26, at the Apache County Courthouse in St.

Johns.

Judge Michael Nelson, the settlement judge for these negotiations, reports favorable progress in all aspects of the talks. Among the topics being discussed are the configuration of the pipeline to bring water from Lake Powell to the Hopi Tribe and the Navajo Nation, the allocation of the pipeline's operation and repair costs, procedures for contracting with tribes and tribal employment during pipeline construction, environmental considerations, management plans for the N-aquifer and common surface washes, the aggregate amount of *de minimis* or small uses, administration of the settlement, and the timetable and procedures necessary to seek approval of the settlement.

At least some portions of the settlement are likely to require approval by Congress, the state legislature, tribal councils and the Little Colorado River adjudication court. Concerning the court approval process, some of the negotiating parties appear to believe that a special procedural order from the Arizona Supreme Court may be necessary to provide the procedure and criteria to guide the Superior Court in its review of the settlement. Such a special procedural order was issued by the Supreme Court in 1991 to provide the framework necessary for the Superior Court in Maricopa County to consider Indian water right settlements in the Gila River adjudication. A copy of this order may be obtained through the office for the Special Master.

The 1991 order was drafted by some of the major parties in that case who then petitioned the Supreme Court for its adoption. The Supreme Court issued a revised version of the proposed rule on May 16, 1991. Three Indian water rights settlements have been approved by the Superior Court under this order: Salt River Pima Maricopa Indian Community (1991), Fort McDowell Indian Community (1993) and Yavapai-Prescott Indian Tribe (1995).

The Little Colorado River negotiators are reviewing the Supreme Court's 1991 order to determine its suitability for the evolving settlement in that case. The negotiators are likely to propose a modified rule to the Supreme Court more closely tailored to the unique features of the settlement.

Gila River Proceedings

The deadline for filing comments on the preliminary hydrographic survey report (HSR) for the Gila River Indian Reservation was June 30 (*see* March and April/May 1997 *Bulletins*). By that date, 11 sets of comments had been submitted to the Arizona Department of Water Resources. The longest set of comments was from the Gila River Indian Community itself, which submitted a document nearly two inches thick.

The comments ranged from very general to very specific recommendations to DWR as to how the HSR should be revised before it is finalized by the department. Many parties indicated that they believe DWR should do more in terms of estimating the number of practicably irrigable acreage (PIA) found on the Gila River Indian Reservation. The PIA standard has been used by other courts to determine the quantity of water awarded to Indian tribes. Other general comments suggest the need for more legal history about

the reservation, an estimate of the water available to the reservation when it was first designated, and a discussion of the United States' claim (as trustee) in behalf of the Indian Community.

The attorney for the Bella Vista Water Co. and other parties combined his comments with a motion to the court asking for a suspension of the HSR process as it pertains to the Gila River Indian Community. The motion argues that the parties should begin to litigate the claims pertaining to the Gila River Indian Community and not "waste another one to five years arguing about the Department's non-binding assessment of the GRIC's PIA rights." The United States has responded to the motion noting that the HSR is required by the statute and by the special master's rules for the adjudication. This motion and other pending motions are expected to be addressed by Judge Susan Bolton at a hearing in early fall.

Parties Submitting Comments to the Gila River Indian Reservation Preliminary HSR (filing deadline was June 30, 1997)

- **Gila River Indian Community & Silas Kisto** (Cox & Cox)
- **United States** (Patrick Barry)
- **Arizona Attorney General's Office** (Charlotte Benson)
- **City of Phoenix** (M. James Callahan)
- **Cities of Chandler, Glendale, Mesa & Scottsdale** (William H. Anger)
- **Phelps Dodge Corp.** (Jerry Haggard)
- **Gila Valley Irrigation Dist. & Franklin Irrigation Dist.** (L. Anthony Fines)
- **Cities of Benson, Sierra Vista & Globe; Towns of Mammoth & Patagonia; and Lone Mountain Ranch, Inc.** (Jennele M. O'Hair)
- **Salt River Project** (John Weldon)
- **San Carlos Apache Tribe, Tonto Apache Tribe & Yavapai-Apache Nation** (Joe Sparks)
- **Bella Vista Water Co., Cortaro-Marana Irrigation Dist., Cortaro Water Users' Assn. and Town of Gilbert** (William P. Sullivan)

Helpful Definitions

Acre-foot:

An expression of water quantity. One acre-foot will cover one acre of ground one foot deep. An acre-foot contains 43,560 cubic feet, 1,233 cubic meters, or 325,819 gallons (U.S.). It is often stated that one acre-foot will supply a family of five for one year.

Cubic foot per second:

A unit expressing the rate of discharge of water. Once cubic foot per second is equal to the discharge through a rectangular cross section, one foot wide and one foot high, flowing at an average velocity of one foot per second. One cubic foot per second equals 448.8 gallons per minute, and 1.98 acre-feet per day. It is a rate of water movement in volume unit of time.

Drought:

There is no universally accepted quantitative definition of drought. Generally, the term is applied to periods of less than average precipitation over a certain period of time; nature's failure to fulfill the water wants and needs of humans.

Gallon:

A unit of volume. A U.S. gallon contains 231 cubic inches, 0.133 cubic feet, or 3.785 liters. One U.S. gallon of water weighs 8.3 pounds.

Calendar

Gila River Adjudication Steering Committee Meeting with Special Master

Aug. 25, 1997 -- 10 a.m.

Dept. of Water Resources Conference Room A.

500 N. Third Street, Phoenix, AZ 85004

(see minute entry June 24, 1997 and Aug. 4, 1997)

Little Colorado River Adjudication Status Conference before Judge Minker

Sept. 26, 1997 -- 9:30 a.m.

Apache County Courthouse, St. Johns

(see minute entry May 2, 1997)

Special Action CV-95-0161-SA

Opening briefs due

Oct. 20, 1997

(see orders Aug. 1, 1997 and Aug. 13, 1997)

NARF/WSWC Fifth Symposium on the Settlement of Indian Reserved Water Rights Claims

Oct. 8-10, 1997

Crowne Plaza Hotel, Phoenix

(see article in July Bulletin for further information)

Sources for Help

If you have questions in a particular area, here are the proper people to contact.

Adjudications, HSRs, WFRs, Discovery

Lisa Jannusch, Adjudications Division

AZ Dept. of Water Resources

500 N. 3rd Street, Phoenix, AZ 85004

(602) 417-2442 or (Toll free in AZ) 1-800-352-8488

Scheduling, Procedure

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Pleadings

Gila River

Oscar Garcia, Clerk's Office
Maricopa County Superior Court, Records Management Center
3345 W. Durango St., Phoenix, AZ 85009
(602) 506-4139
(602) 506-4516 fax

Little Colorado River

Clerk's Office
Apache County Superior Court
Apache County Courthouse
P.O. Box 365, St. Johns, AZ 85936
(520) 337-4364

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