

Arizona General Stream Adjudication Bulletin

OFFICE OF THE SPECIAL MASTER • February 1999

Supreme Court Denies Fees, Bolton Challenge

The San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Nation succeeded in overturning much of the legislation passed in 1995 to alter Arizona's stream adjudications (see "Supreme Court Decides Special Action," Jan. 1999 Special Issue). They have failed, however, to convince the supreme court to award them attorneys fees and costs for their efforts.

In a short order signed by Justice Stanley Feldman and filed on Feb. 2nd, the court denied the Apache Tribes' requests for approximately \$1.5 million in fees and costs. The order also denied the Tribes' motion for reconsideration of the January decision. The Tribes had asked for specific rulings on certain sections of the 1995 legislation that the earlier

decision had not addressed. (*San Carlos Apache Tribe v. Superior Court*, No. CV-95-0161-SA)

The supreme court also denied the Apache Tribes' petition to remove Judge Susan R. Bolton as the assigned judge for the Gila River adjudication and to bar the participation of certain Department of Water

Resources officials in the adjudication. (*San Carlos Apache Tribe v. Bolton*, No. CV-98-0143-SA) The Tribes had complained of out-of-court communications between Bolton and DWR that led to a changed format for the Gila River Indian Community Hydrographic Survey Report (HSR) (see Jan.-Mar.

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Dawson Named LCR Judge

The Arizona Supreme Court has named Edward L. Dawson as the assigned judge for the Little Colorado River adjudication.



Dawson is a superior court judge in Gila County with his offices in Globe. He recently completed twelve years as presiding judge of his court. Dawson succeeds Allen Minker as the assigned judge for the adjudication. Minker did not run for reelection to superior court in November 1998 (see Apr.-July 1998 *Bulletin* p. 3).

Judge Dawson has lived in Gila County most of his life. He received both his undergraduate and legal education at the University of Arizona. He was in private practice between 1967 and 1972, with several cities and towns among his clients. In 1972, he was elected county attorney.

Since becoming a superior court judge in 1972, Dawson has heard "everything that gets filed in superior court." He has been active in the Arizona judiciary, serving as a member of the Arizona Judicial Council, Committee on Juvenile Court, and Statewide Commission on Juvenile Justice. He has lectured at numerous judicial conferences. He also has served as president of the Arizona Judges Association.

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Little Colorado River Proceedings

Next Hearing Changed

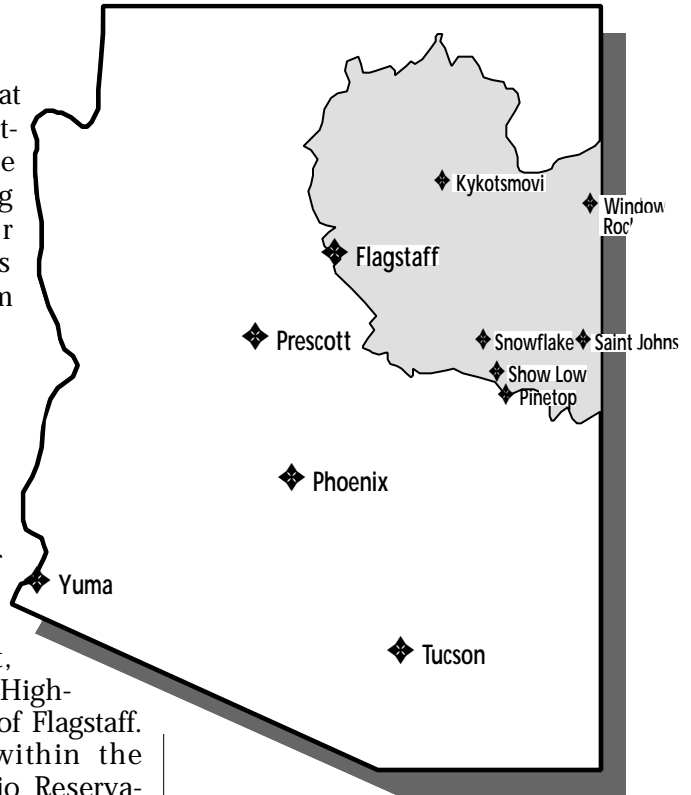
Judge Edward Dawson has changed the date for the next hearing on the status of settlement discussions in the Little Colorado River adjudication. The previous hearing date, April 1st, has been cancelled. The new hearing date is 9:30 a.m.

on Thursday, April 22, at the Apache County Courthouse in St. Johns. The date for the negotiating parties to submit their settlement report has been extended from March 26th to April 16th.

In re Atkinson's Ltd. of Az. DBA Cameron Trading Post, No. 6417-34-1

The Special Master has organized a contested case concerning Atkinson Trading Post, located at Cameron on Highway 89 fifty miles north of Flagstaff. The trading post is within the boundaries of the Navajo Reservation. The contested case is the result of a petition for declaratory judgment and recognition of water rights filed by Atkinson Trading Company in Sept. 1997. The petition asks for a declaration that "its water rights were issued pursuant to Arizona law . . . and that the Navajo Nation does not have the authority to assert its jurisdiction over ATC's water rights or administer ATC's water rights pursuant to the Navajo Nation Water Code."

The petition had been deferred for more than a year so as not to conflict with the overall settlement negotiations underway in the Little Colorado River adjudication. At his last status conference in November, departing Judge Allen Minker ordered the Special Master to begin proceedings on the petition (*see* Minute Entry of Nov. 20, 1998).



The Master is organizing a telephonic pretrial conference to determine the schedule for the case. Other parties involved include the Navajo Nation and Chevron USA, which has filed claims at the trading post location. ♠

Dawson Named LCR Judge

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Dawson and his wife, Shirley, have been married for 35 years. They have six children and have been foster parents to many more. Shirley is a native of Arizona, has a master's degree in special education, and now manages a family-owned travel agency in Globe. ♠

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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.

Volume 7
Number 1

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Gila River Proceedings

Gila River Indian Community

Within hours of learning that the stay in the Gila River adjudication had been removed (*see* lead article), the Arizona Department of Water Resources filed its preliminary hydrographic survey report (HSR) for the Gila River Indian Reservation. The reservation, which asserts some of the oldest and largest claims in the adjudication, is located along the Gila River south of Phoenix.

The report, ready since mid-December, is an important step in adjudicating the water rights of the Gila River Indian Community. The report will be followed by already scheduled motions (purpose of reservation, effect of other legal proceedings and agreements; *see* Aug.-Oct. 1998 *Bulletin* p. 4), a final HSR, the filing of objections, and trial.

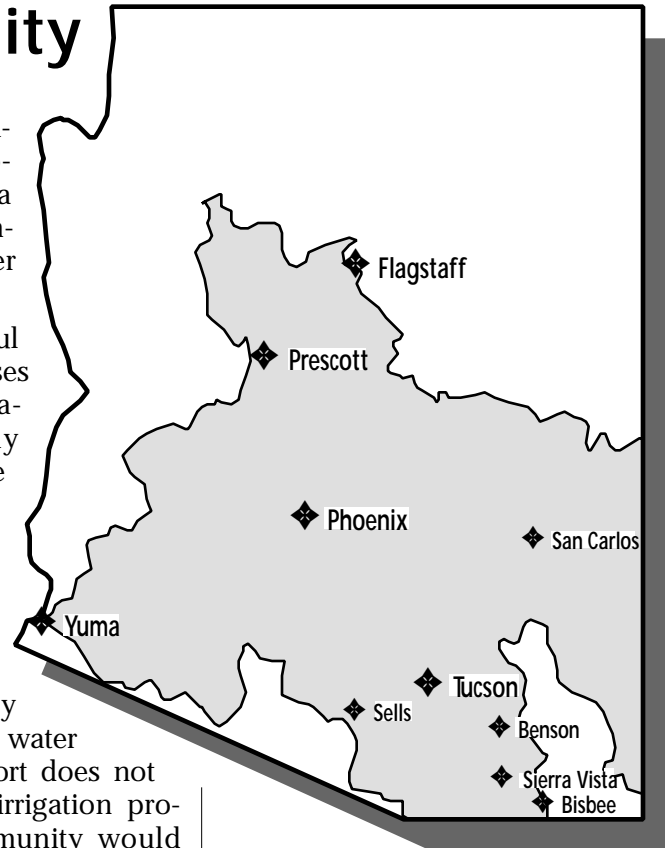
The preliminary report expands on an earlier draft HSR filed by the department in January 1997. That report contained chapters on current water uses on the reservation, the amount of arable land, an economic analysis of current irrigation practices, and the amount of water now physically available to the reservation.

The most recent preliminary report, containing six chapters and six appendices, updates the estimate of arable lands (Chapter 2), estimates the water supply available to the reservation when it was created and when other parcels were added (Chapter 3), provides calculations of current and historic

water duties and conveyance losses (Chapter 4), and includes a summary of the community's claims under state law (Chapter 5).

The report is careful to note that it addresses only the physical features of "practicably irrigable acreage (PIA)" analysis—the method used to quantify the water rights of agriculturally based Indian tribes. Thus, the report deals chiefly with arable land and water availability. The report does not address the type of irrigation project the Indian community would design for the undeveloped portion of the reservation or the economics of the project. The community is left to develop that information as part of the evidence supporting its claim.

The concluding chapter of the preliminary HSR summarizes the department's inquiry. The arable land base of the reservation consists of 252,348 acres, although the



amount unconstrained by other uses and floodplains is 175,429 acres. The amount of water now used to irrigate crops averages 5.98 ac-ft/ac/yr. Thus, more than 1 million ac-ft/yr would be required to irrigate all the unconstrained arable land on the reservation.

The department reports, however, that Gila River flows have rarely supplied that amount of water. In 1859, when the reservation was created, DWR estimates the annual median flow in the vicinity to have been 360,000 acre-feet. Between 1876 and 1915, when other additions

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CALENDAR

Mar. 1, 1999

Case No. W1-203 (GR)
Due date: Motions for summary judgment re preclusive effect of Globe Equity decree (*see minute entry Sept. 11, 1998*)

Mar. 26, 1999 - 2:00 p.m.

Case No. W-1, W-2, W-3 & W-4 (GR)
Hearing on Gila River Indian Community & San Pedro River procedural matters
Maricopa County Courthouse, East Court Building
101 W. Jefferson, Phoenix
Courtroom 513
(*see minute entry Feb. 23, 1999*)

Apr. 1, 1999

Case No. W1-203 (GR)
Due date: Exchange of expert reports re purposes of the Gila River Indian reservation
(*see minute entry Sept. 11, 1998*)

April 22, 1999 - 9:30 a.m.

Case No. 6417 (LCR)
Status Conference

Apache County Courthouse, St. Johns
(*see minute entry Feb. 24, 1999*)

Apr. 30, 1999

Case No. W1-203 (GR)
Due date: Responses to motions for summary judgment re preclusive effect of Globe Equity decree (*see minute entry Sept. 11, 1998*)

May 14, 1999

Case No. W1-203 (GR)
Due date: Joinders in responses to motions for summary judgment re preclusive effect of Globe Equity decree
(*see minute entry Sept. 11, 1998*)

June 1, 1999

Case No. W1-203 (GR)
Due date: Replies to responses to motions for summary judgment re preclusive effect of Globe Equity decree
(*see minute entry Sept. 11, 1998*)

Abbreviations: GR = Gila River adjudication
LCR = Little Colorado River adjudication

DWR Files Preliminary HSR

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were made to the reservation, median flows gradually decreased from 348,000 ac-ft/yr to 272,000 ac-ft/yr. While available Salt River flows were higher for the same period (an estimated 624,000 ac-ft/yr), DWR reports that "the Salt River only meets the Reservation at its westernmost point and pre-development use of the Salt by the Community was restricted to the Maricopa Colony area." Finally, DWR estimates that 22 million ac-ft of groundwater may be in storage within reservation boundaries (to a depth of 1,000 feet), but that groundwater levels were reduced by 1 million ac-ft between 1900 and 1998.

The filing of the preliminary HSR opens a 60-day period for submitting comments to DWR. Comments may be submitted until April 20, 1999. The preliminary HSR may be inspected at the Clerk's office or at DWR. It may be purchased from DWR for \$60.00.

Bolton Hearing Rescheduled

Judge Susan R. Bolton has rescheduled a hearing that was canceled due to a overall stay (since removed) of the Gila River adjudication issued in December 1998. The hearing will now be held at 2:00 p.m. on Friday, March 26th, at the Maricopa County Courthouse in Phoenix. Among the items to be discussed will be the scheduling of other preliminary motions concerning the claims of the Gila River Indian Community (*see preceding article*) and the procedure for hearing exceptions to the Special Master's 1994 report (modified in 1995) on the quantification of stockponds, stockwatering uses, and domestic uses in the San Pedro River watershed (*see Dec. 1994 Bulletin*, p. 1).



Supreme Court Denies Fees, ...

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1998 *Bulletin* at p. 4). The supreme court simply indicated that "the Petitioners are not entitled to the relief they seek."

The court did indicate that a written opinion would follow and, pending further court orders, Bolton and DWR were directed "to refrain from off-the-record communications regarding matters of substance in the [adjudication]."

Finally, the court removed the stay on activities in the Gila River adjudication. The temporary stay had been imposed by the court on December 15th (*see Nov. 1998-Jan. 1999 Bulletin* at p. 1).

On February 17th, the Apache Tribes asked the Supreme Court to reconsider its denial of attorneys fees. ♠

Sources for Help

Access the Arizona Judicial Department web page at <http://www.supreme.state.az.us/welcome.htm> and the **Arizona General Stream Adjudication web page** at <http://www.supreme.state.az.us/wm/stream.htm>

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