

Arizona General Stream Adjudication Bulletin

OFFICE OF THE SPECIAL MASTER • July - August 1999



San Carlos Apache Settlement Scrutinized

Objections have been filed to the proposed San Carlos Apache Tribe water rights settlement by major parties and individual citizens. On June 17, Judge Susan Bolton indicated that she would not decide the motion filed by the cities of Globe and Safford, joined by the Central Arizona Water Conservation District (CAWCD), to vacate the approval process. She determined that the arguments made by the moving parties were more appropriate as formal objections to the settlement. See May-June 1999 *Bulletin* at p. 1.

Leading the list of major objectors on July 1st was Gov. Jane Hull herself who, having failed to mediate differences between the Tribe and the

City of Globe, ended up opposing the settlement as bad public policy and contrary to state and federal law. The Governor's objection resulted in an unusual situation as two state agencies, the State Land Dep't and the Game and Fish Comm'n, had been involved in negotiating the settlement. Hull appears to have been helpful in resolving the dispute between Safford and the Tribe.

The City of Globe objected because of differences with the Tribe over groundwater pumping near the reservation border. The City of Glendale and the Central Arizona Water Conservation District allege that the proposed settlement is different from the one approved by Congress in 1992 and that the water allocation to the Tribe would materially affect the objectors' water rights. Fourteen

individuals filed objections for a variety of reasons, but several of these people have since withdrawn their objections.

The proceeding is now before the Special Master who held a pretrial conference on July 23rd to determine a schedule for the case which must be completed by the year's end. The Master announced a hearing on discovery issues on August 11th, hearings on legal issues on August 24th and September 23rd, and a trial commencing on October 25th. The Master also announced he might appoint a mediator to assess and recommend whether mediation could be used to resolve some of the differences between the Tribe and the major objectors. Gregg Houtz of the Arizona Department of Water Resources (ADWR) was requested to mediate between individual objectors and the Tribe. ♠

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Indian Water Rights Settlement Symposium

The Western States Water Council (WSWC) and the Native American Rights Fund (NARF) are cosponsoring a symposium on Indian water rights settlements. The event occurs Sept. 8-10, 1999, in Missoula, Montana. The sixth such symposium since 1990, the event will have particular importance as the Clinton Administration approaches its last year and Department of Interior officials are

anxious to conclude several major settlements. David Hayes, Acting Deputy Secretary of Interior, will be a keynote speaker. Arizona Judge Michael C. Nelson will speak on Little Colorado Adjudication settlement efforts. Many other Arizona water attorneys are also on the agenda. Contact the Western States Water Council for more information: (801) 561-5300. ♠

Gila River Proceedings

Bolton Hearing

Judge Susan R. Bolton held a regularly scheduled status conference on June 29th to take up numerous topics involving the Gila River Adjudication. The Gila River Indian Community reported progress concerning settlement of many Gila River issues. Sen. Jon Kyl has facilitated recent talks. Counsel for

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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 4

John E. Thorson, Special Master

Kathy Dolge, Assistant to
Special Master



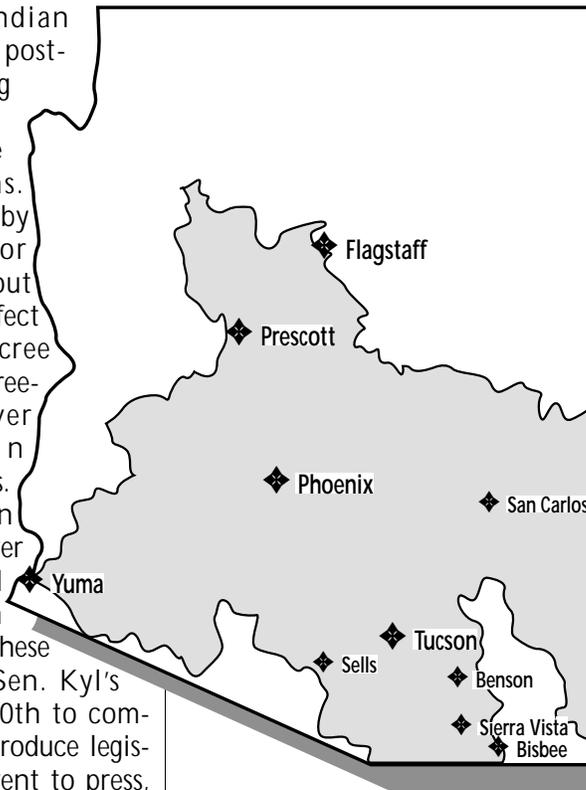
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the Gila River Indian Community requested a postponement of upcoming court deadlines to allow sufficient time for more settlement discussions. Judge Bolton responded by extending the dates for additional pleadings about the possible preclusive effect of the Globe Equity Decree and other decrees and agreements on the Gila River Indian Community's water rights. See Calender, p.6. (On August 6th, the Gila River Indian Community and other parties requested an additional 30-day stay in these proceedings, based on Sen. Kyl's deadline of September 30th to complete negotiations and introduce legislation. As the *Bulletin* went to press, Judge Bolton had not ruled on this request.)

Judge Bolton indicated she will broaden her inquiry into the relationship between the Globe Equity Decree and the Gila River Adjudication. She ordered that parties interested in the possible preclusive effect of the decree on other Gila River users must disclose documents and information by January 31, 2000. Supplemental disclosures of information are to be made by March 21, 2000. Bolton indicated she would meet with ADWR to determine what type of notice should be provided to Gila River claimants about her inquiry into Globe Equity issues.

Attorneys for several large water users in the upper Santa Cruz basin indicated that they have been discussing a possible water rights settlement in that area. They have



met with ADWR which may be interested in assisting in developing a pilot consensus-building project in that watershed.

The Department of Water Resources reported it had not reached a decision on what type of mailing is required to provide notice of the Preliminary Hydrographic Survey Report (HSR) for the Gila River Indian Community. Counsel for the department indicated that the entire mailing list for the Gila River Adjudication is becoming inaccurate due to age. See article on page 3. Judge Bolton ordered the department to report by August 16, 1999, on the type of notice it believes is necessary for the preliminary HSR.

In discussing the future of the adjudication, Judge Bolton inquired about the status of the San Pedro River

Continued on page 3...

Gila River Proceedings

Continued from page 2...

HSR and what would be necessary to bring it up-to-date. Counsel for ADWR suggested that any update would be difficult until the Arizona Supreme Court decided Issue No. 2 (the relationship between surface and groundwater) and, in any event, three to four years might be necessary. Bolton ordered the department to file a proposed timetable for updating the HSR and the department's opinion on when this process should begin. This report is due September 15th.

Trimble v. Chattman

The request for \$118,000 in attorneys' fees and \$49,000 in taxable costs in litigation between neighbors north of Cave Creek over a small spring has been denied by the Special Master. See May-June 1999 *Bulletin* at p. 5. The circumstances for the request were unusual in that many of the Chattmans' claimed expenses were incurred in an earlier civil case. The superior court judge hearing that case indicated that the water rights controversy should be determined in the water adjudication court.

In his July 13th report to superior court, the Special Master found that the Chattmans had not demonstrated why they are entitled to attorneys' fees as the result of a contract or for other reasons. The Master indicated that the earlier judge was in a better position to determine who was the prevailing party for the recovery of costs incurred in the earlier action. Finally, the Master found that no recoverable costs had been itemized for the proceedings

before the adjudication court.

The Chattmans have asked the Special Master to reconsider his decision before the matter is finally addressed by Judge Susan Bolton.

Mailing List Problem

The mailing list for claimants in Arizona's adjudications was started as statements of claimant were filed beginning in 1980. Recent mailings in the San Carlos Apache Tribe water rights settlement case (see lead story) suggest that the mailing list is rapidly getting stale. Of the more than 24,000 notices mailed announcing the pending settlement, almost 40 percent appear to have been returned undeliverable.

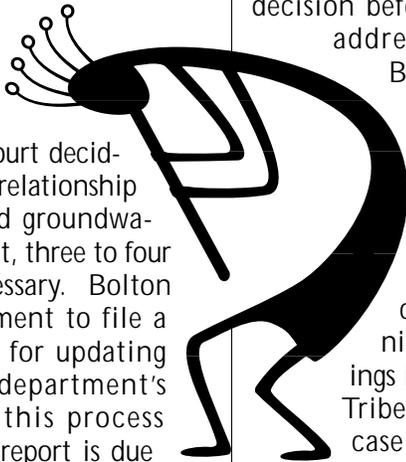
This is understandable for a mailing list almost 20 years old as people move or die and property changes hands. Little has been done to maintain the accuracy of the list as claimants invariably fail

to notify the court or the Arizona Department of Water Resources of address changes and escrow companies frequently do not process water claimant assignment forms when property changes hands.

Judge Susan Bolton has instructed the Special Master and ADWR to propose solutions to this problem. They have met on several occasions and once with the Gila River Adjudication Steering Committee to study the issue.

Preliminary indications are that the mailing list problem will not be easily solved. Using commercial services, many addresses can be updated; but this does not answer the question of whether land ownership has changed. Tax assessment records list current owners but it is difficult to match legal descriptions on these records with land descriptions contained in decades-old statements of claimant.

The Special Master and ADWR are expected to propose a multi-faceted approach to this problem by early September. ♠



ABA Water Law Conference



The 18th Annual Water Law Conference, sponsored by the Water Resources Committee of the American Bar Ass'n, will be held on February 23-25, 2000, in San Diego. To accommodate ever-growing attendance, the conference will be held at the U.S. Grant Hotel in downtown San Diego. Phoenix water law attorney Larry Caster has been recently appointed as the committee chair. Colorado attorney Ramsey L. Kropf, formerly with the Office of the Special Master, is a conference co-chair. Tempe attorney Charlotte Benson serves on the planning committee. ♠

Little Colorado River Proceedings

Negotiations Continue

The major parties to the Little Colorado River Adjudication continue to meet, often under the auspices of Settlement Judge Michael C. Nelson, in an effort to secure a major settlement in the adjudication. The negotiators are attempting to complete their discussions by early fall in time for authorizing legislation to be introduced in Congress. One development that has made settlement more difficult is a recent suit by the Navajo Nation against Peabody Coal Co. and others alleging fraudulent transactions involving coal royalty payments made to the Nation.

One of the remaining questions is how Central Arizona Project (CAP) water may be involved in making the settlement possible. The answer to that question may depend on resolution of separate federal court litigation between the United States and the Central Arizona Water Conservation District, the state's contracting agent, over how much money the District owes the federal government as payment for CAP construction.

Status Conference Postponed

The status conference scheduled for



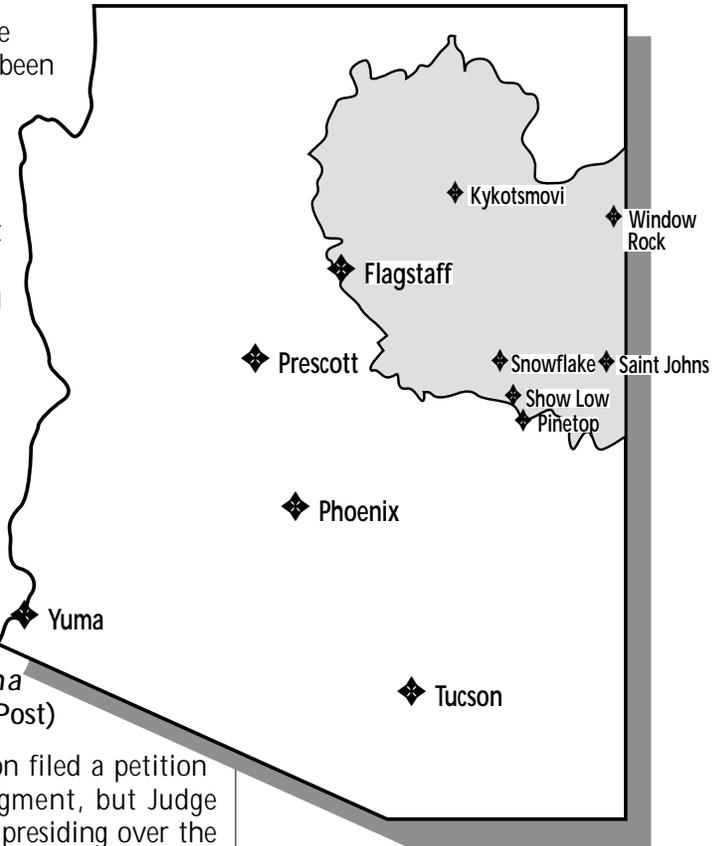
Sept. 1st before Judge Edward Dawson has been postponed at the request of Settlement Judge Michael C. Nelson. Nelson reported that the settling parties were awaiting meetings with Sen. Jon Kyl of Arizona, who is unavailable until the end of September. The status conference has not been rescheduled at the present time.

In re Atkinson's Ltd. of Arizona (Cameron Trading Post)

In 1997, Atkinson filed a petition for declaratory judgment, but Judge Allen Minker, then presiding over the Little Colorado River Adjudication, refused to consider it while overall settlement discussions were underway. Finally, in November 1998, Minker referred the petition to the Special Master.

The case is now organized as Contested Case No. 6417-34-1 and involves the Navajo Nation; the United States; and Atkinson, which operates a trading post and related facilities known as Cameron Trading Post, a site on U.S. Highway 89 approximately 50 miles north of Flagstaff. Atkinson claims water rights under state law, but the trading post is now completely surrounded by Navajo land.

In its petition, Atkinson seeks a declaration that its water rights were established under state law and that



the Navajo Nation has no authority or jurisdiction over those rights. Atkinson contends that the Navajo Nation intends to apply its water code unlawfully to Atkinson's water rights. The United States and Navajo nation have filed motions to dismiss the petition saying that there is no "ripe" dispute between Atkinson and the Nation. They further argue that Atkinson has failed to exhaust its remedies within the Navajo governmental system and, in any event, the Nation is immune from this type of litigation. The matter has now been submitted and awaits decision from the Special Master. ♠

CALENDAR

Aug. 11, 1999

Case No. W1-204 (GR)
Due: Responses re 1st round of motions
(see case management order July 26, 1999)

Aug. 11, 1999 – 9:00 a.m.

Case No. W1-204 (GR)
Hearing re Initial Discovery Issues
ASCB, Appellate Courtroom 1
(see case management order July 26, 1999)

Aug. 20, 1999

Case No. W1-204 (GR)
Due: Replies to responses re 1st round of motions
(see case management order July 26, 1999)

Aug. 24, 1999 – 9:00 a.m.
(note the time)

Case Nos. W-1, W-2, W-3, W-4; W1-203; W1-204 (GR)
Status Hearing
MCC, ECB -- Courtroom 513
(see minute entry June 29, 1999)

Aug. 24, 1999 – 1:30 p.m.

Case No. W1-204 (GR)
Hearing on legal issues (continuing as necessary)
ASCB, Appellate Courtroom 1
(see case management order July 26, 1999)

Sept. 1, 1999 – 9:30 a.m.

Case No. 6417 (LCR)
Status Conference
Apache County Courthouse, Safford
(see minute entry Apr. 22 and July 9, 1999)

CANCELLED

Sept. 3, 1999 *

Case No. W1-203 (GR)
Due date: Responses to motions for summary judgment re preclusive effect of Globe Equity decree
(see minute entries Mar. 26, May 14, and June 29, 1999)

Sept. 3, 1999*

Case No. W1-203 (GR)
Due date: Motions for summary judgment re other past legal proceedings
(see joint motion Dec. 8, 1998, and minute entries Mar. 26, May 14, and June 29, 1999)

Sept. 6, 1999

Labor Day – State Holiday

Sept. 8-10, 1999

WSWC-NARF Indian Water Rights Symposium
Missoula, Montana
(see article on p. 1)

Sept. 8-11, 1999

Arizona Hydrological Society Symposium on Water Issues and Partnerships for Rural Arizona
Hon-Dah Resort, Casino, and

Conference Center
(see article on p. 6)

Sept. 23, 1999 – 9:00 a.m.

Case No. W1-204 (GR)
Hearing on legal issues (continuing as necessary)
MCC, ECB -- Courtroom 814 (or other location to be announced)
(see case management order July 26, 1999)

Oct. 4, 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 entries Mar. 26, May 14, and June 29, 1999)

Oct. 11, 1999

Columbus Day – State Holiday

Oct. 13, 1999

Case No. W1-204 (GR)
Discovery closes
(see case management order July 26, 1999)

Continued on page 6...

Abbreviations

Case Numbers/Names:

W1-203 *In re Water Rights of the Gila River Indian Community*

W1-204 *In re Proposed San Carlos Apache Tribe Water Rights Settlement*

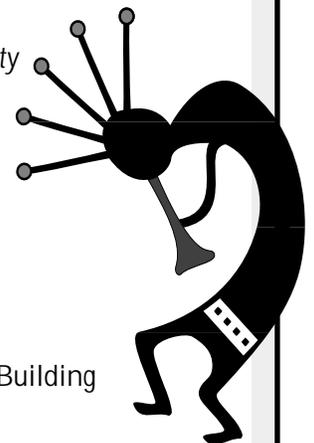
ASCB = Arizona State Courts Building
1501 W. Washington, Phoenix

GR = Gila River adjudication

LCR = Little Colorado River adjudication

MCC, ECB = Maricopa County Courthouse, East Court Building
101 W. Jefferson, Phoenix

*Pending motion may affect this date.



CALENDAR

Continued from page 5...

Oct. 18, 1999

Case No. W1-204 (GR)

Due: Joint pretrial statement
(see case management order
July 26, 1999)

Oct. 20, 1999 – 9:00 a.m.

Case No. W1-204 (GR)

Final pretrial conference
MCC, ECB -- Courtroom
814 (or other location
to be announced)
(see case management order
July 26, 1999)

Oct. 25, 1999 – 9:00 a.m.

Case No. W1-204 (GR)

Evidentiary hearing
(continuing as necessary)
MCC, ECB -- Courtroom
814 (or other location
to be announced)
(see case management order
July 26, 1999)

Nov. 1, 1999*

Case No. W1-203 (GR)

Due date: Responses to
motions for summary
judgment re other past
legal proceedings
(see joint motion Dec. 8,
1998, and minute entries
Mar. 26, May 14, and
June 29, 1999)

Nov. 11, 1999

Veteran's Day –
State Holiday

Nov. 25, 1999

Thanksgiving Day –
State Holiday

Dec. 1, 1999*

Case No. W1-203 (GR)

Due date: Replies to
responses to motions for
summary judgment re other
past legal proceedings
(see joint motion Dec. 8, 1998,
and minute entries Mar. 26,
May 14, and
June 29, 1999)

Dec. 7, 1999 – 9:30 a.m.

Supreme Court Oral
Argument on Issue No. 2
ASCB, Supreme Courtroom,
4th floor

Dec. 17, 1999 – 1:30 p.m.

Case No. W1-204 (GR)

Final hearing before Judge
Bolton (projected)
MCC, ECB -- Courtroom 513
(see case management order
July 26, 1999) ♪

Abbreviations

Case Numbers/Names:

W1-203 *In re Water Rights of the Gila River Indian Community*

W1-204 *In re Proposed San Carlos Apache Tribe Water
Rights Settlement*

ASCB = Arizona State Courts Building,
1501 W. Washington, Phoenix

GR = Gila River adjudication

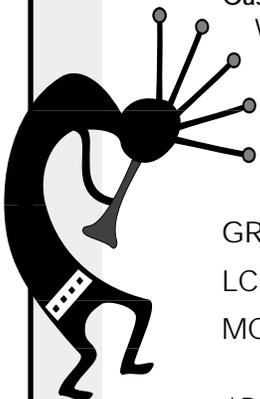
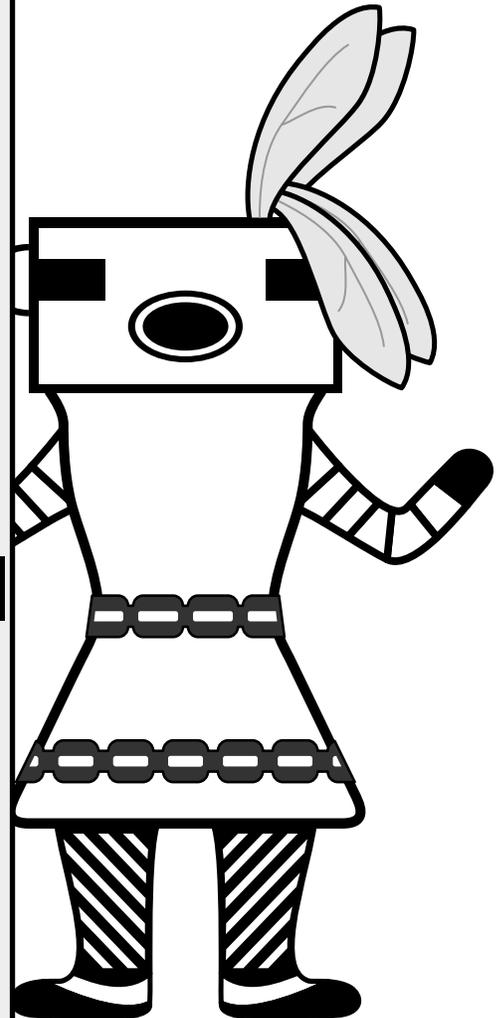
LCR = Little Colorado River adjudication

MCC, ECB = Maricopa County Courthouse,
East Court Building, 101 W. Jefferson, Phoenix

*Pending motion may affect this date.

Water Issues and Partnerships for Rural Arizona

The Arizona Hydrological Society will host its annual symposium on Arizona water issues on Sept. 8-11, 1999, at the Hon-Dah Resort, Casino & Conference Center, in the White Mountains near Pinetop-Lakeside. The symposium will address a range of water topics including general stream adjudications, US-Mexico environmental issues, riparian restoration, and other issues—many with an emphasis on impacts for rural Arizona. Contact the Society for more information: (520) 882-8177. ♪



Sources for Help

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

Access the Arizona Judicial Department web page at

<http://www.supreme.state.az.us> and the

Arizona General Stream Adjudication web page

<http://www.supreme.state.az.us/wm/>

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Lisa Jannusch

Adjudications Division

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<http://www.adwr.state.az.us>

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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 /

FAX (602) 506-4516

Little Colorado River

Clerk's Office

Apache County Superior Court

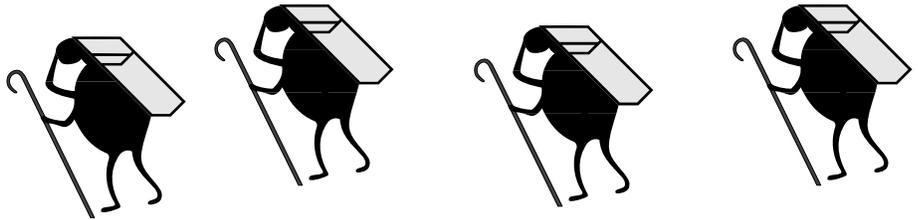
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