

**Arizona General Stream Adjudication Bulletin
July 1997**

**Office of the Special Master
Arizona State Courts Building
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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.

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Kathy Dolge, Assistant to Special Master
Volume 5, Number 4**

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Note: The *Bulletin* usually published in June is issued this year during July. The next *Bulletin* will be published in August.

Supreme Court to Review 1995 Statute

The Arizona legislature enacted a substantial modification of the state's general stream adjudication law during the 1995 legislative session. More than two years later, the Arizona Supreme Court has decided that it will review the merits of the 1995 amendments.

These amendments, set forth in House Bills 2193 and 2276 from the 1995 session, have taken a circuitous route to the Supreme Court. Immediately after passage on March 17, 1995, proponents of the legislation asked Little Colorado River Adjudication Presiding Judge Allen Minker to declare the constitutionality of the bills. He declined the invitation, saying that the parties' time was better spent negotiating a settlement of the Little Colorado adjudication. Opponents of the legislation, principally the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Tribe (Camp Verde Reservation), petitioned the Supreme Court to review the legislation using a "special action proceeding." The Supreme Court agreed to this request; but, in an unusual step, referred the challenges to Susan R. Bolton, the Superior Court judge assigned to the Gila River adjudication.

Over the next year, Bolton considered briefs and oral arguments concerning legal challenges to the new legislation. Her decision was issued on August 30, 1996. She upheld parts of the legislation, struck other sections down as unconstitutional, and indicated that still other provisions could only be applied prospectively. Several parties immediately petitioned the Supreme Court to review the decision and, a month later, Bolton herself certified her determination to the appellate court. The Apache Tribes claimed victory by requesting an attorneys' fee award from the Supreme Court (not yet considered by the Court).

After allowing parties to file pleadings supporting or opposing review, the supreme court on May 23, 1997, finally issued an order indicating how it will proceed. The court indicated that it has accepted the certification and will review Bolton's decision. The court also indicated that:

- A presubmittal (scheduling) conference will be held at 10 a.m. on Monday, July 28, 1997, at the Arizona State Courts Building, 1501 W. Washington, Phoenix (4th floor).
- Parties in either the Gila or Little Colorado River adjudications who intend to participate in proceedings before the Supreme Court must file notices of appearance no later than 20 days before the presubmittal conference.
- At the time they file notices of appearance, parties may also file pleadings specifying those determinations by Judge Bolton that they believe to be in error.

Little Colorado River Proceedings

Summer has only slightly reduced the pace of negotiations in the Little Colorado River adjudication. After a favorable report to Presiding Judge Alan Minker at a May 2 status conference (see April/May 1997 Bulletin), the negotiators have continued to meet.

Negotiating sessions were held in Zuni, New Mexico, on May 28 and in Flagstaff on May 29 and June 18-20. Negotiating sessions continue to be facilitated by Settlement Judge Michael Nelson who reports that progress has been made on both the "north" and "south" side discussions (see April/May 1997 Bulletin). The parties must submit additional status reports to Judge Minker on August 8 and September 19. The next status conference is scheduled for 9:30 a.m. on Friday, September 26 at the Courthouse in St. Johns.

Phelps Dodge-San Carlos Apache Tribe Dispute

Since World War II, the Phelps Dodge Corp. has pumped water from the Black River (a tributary of the Salt River) and transported it by pipe and open channel to the copper mine at Morenci. The Black River pump site is within the San Carlos Apache Tribe Reservation. On May 12, the San Carlos Apache Tribe filed a complaint in tribal court asking that Phelps Dodge be evicted from the reservation based on the allegation that the tribe's permission had expired and, in any case, had been originally obtained by fraud.

While defending these allegations in tribal court, Phelps Dodge also petitioned Superior Court Judge Susan R. Bolton on May 14 for a preliminary injunction preventing the tribe from interfering with the corporation's claimed water rights. Judge Bolton referred the dispute to Special Master John Thorson. The Master heard oral arguments on May 15. The parties debated whether the state Superior Court should act or defer in favor the tribal court proceedings. The Master determined that he would allow the tribal court to consider whether it had jurisdiction. The Master indicated that he would continue the proceedings if necessary after the tribal court trial, particularly if domestic water supplies to Morenci-area residents were threatened.

On May 16, the attorneys for Phelps Dodge and the San Carlos Tribe notified the Special Master that they had reached an agreement whereby the corporation would leave the reservation and turn over the operation of the pumps to Bureau of Reclamation and tribal employees. At the parties' request, the Master canceled additional hearings on the matter.

Indian Water Rights Conference

The Western States Water Council and the Native American Rights Fund have announced a symposium in Phoenix on the "Settlement of Indian Reserved Water Rights Claims." The symposium will be held on Oct. 8-10, 1997, at the Crowne Plaza Hotel in downtown Phoenix. It will be the fifth symposium jointly sponsored by the two organizations. Registration fees are \$150 per person before September 15, \$200 after that date, and \$250 at the door. Call the Water Council at (801) 561-5300 for registration forms or more information.

Gila River Proceedings

HSR Format for Indian Lands

At her April 11 hearing, Judge Susan R. Bolton took under advisement the objections of the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Tribe (Camp Verde Reservation) to the hydrographic survey report (HSR) format being used to report the water uses and claims of the Gila River Indian Community. The preliminary HSR for the land of the Gila River Indian Community, which was prepared by the Arizona Department of Water Resources, was released on January 30, 1997 (*see* Mar. 1997 *Bulletin*). The Apache Tribes argue that the format differs from that originally approved by Judge Stanley Z. Goodfarb in 1989 and that the changes were approved by Judge Bolton in August 1995 without an opportunity for the parties to be heard.

Judge Bolton rejected the Apache Tribes' objections in a minute entry filed May 14. She indicated that no longstanding law of the case was changed by her August 1995 order. The format for the Gila River Indian Community's HSR reflects the apparently large amount of information that already exists about present and future water uses on the reservation. Future HSRs for Indian lands are also likely to be tailored to meet the information needs of the court and parties. "[T]he format for Indian and federal reservation HSRs is still a work in progress which hopefully will improve over time," Bolton said.

Meetings with Steering Committee

Members of the Gila River Steering Committee met with Special Master John Thorson on May 19 and June 23 to discuss case management for litigating the claims of the Gila River Indian Community (*see* April/May 1997 *Bulletin*, p. 3). Committee members agreed on topics to discuss during the next several meetings. The committee also agreed to compile an inventory of historic documents that might pertain to the claims of the Indian Community although several committee members voiced concerns about how documents would be identified and used.

After the May 19 meeting, the Special Master's office worked with Steering Committee members to produce a 14-page outline of these documents and to collect a complete set of the documents themselves. This inventory was refined at the June 23 meeting and the committee discussed how to make the list and documents available to interested parties.

The next meeting of the Steering Committee will be held August 25 at 10 a.m. in Conference Room A of the Department of Water Resources, 500 N. Third Street, Phoenix. Committee members will work with the Special Master to complete a report on recommended case management procedures for the Gila River Indian Community litigation.

Inventory Available

The Inventory of Documents Possibly Related to Gila River Indian Community Claims (4th Draft) consists of a table of contents and 162 individual documents that total more than 2,100 pages. A copy of the table of contents may be obtained for free from the Special Master's office. After July 16, a complete set of these documents may be borrowed by any Gila River adjudication party for a period of 5 business days. This will allow the borrower to examine the documents in depth or to copy the set. Please call the Special Master's office at 542-9600 to make an appointment to borrow the inventory.

Calendar

Presubmittal Conference

Supreme Court

No. CV-95-0161-SA

July 28, 1997 -- 10 a.m.

Arizona State Courts Building, 4th Floor (*see* Supreme Court order May 23, 1997)

Gila River Adjudication Steering Committee Meeting

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

Department of Water Resources, 500 N. Third Street, Phoenix, AZ 85004

Conference Room A

(*see* minute entry June 24, 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)

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

Oct. 8-10, 1997

Crowne Plaza Hotel, Phoenix

(*see* article in this issue 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

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(602) 506-4516 fax

Little Colorado River

Clerk's Office

Apache County Superior Court

Apache County Courthouse

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