

# Arizona General Stream Adjudication Bulletin

OFFICE OF THE SPECIAL MASTER • November 1998 - January 1999

## Supreme Court Stays Gila River Adjudication

The slow-moving Gila River adjudication ground to a complete halt on December 15th when the Arizona Supreme Court issued a stay of all proceedings in the case. The stay order was prompted by a motion filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai Apache Nation on December 7th seeking to cancel a December 21st hearing before Judge Susan R. Bolton. The hearing had been called to discuss a schedule and procedure for addressing preliminary motions concerning the water right claims of the Gila River Indian Community. The Apache Tribes' motion was opposed by the Gila River Indian Community which seeks an early hearing on its water rights claims (see Gila River Proceedings).

The Apache Tribes have sought to remove Judge Bolton from the Gila River adjudication since March 1998 when they filed a special action

proceeding with the supreme court seeking her disqualification (No. CV-98-0143-SA). The tribes allege that Bolton received improper communications from the Arizona Department of Water Resources, which is designated by statute as the technical advisor to the court.

The tribes also seek the disqualification of Rita Pearson, DWR director, and Michael Pearce, DWR chief counsel, from participation in the case. The Apache Tribes argue that DWR surrendered its neutral technical advisor role when it supported statutory changes to the adjudication that have been challenged in a separate special action filed by the tribes.

In its December 15th order, the

The Arizona Supreme Court has decided *San Carlos Apache Tribe v. Superior Court*, the challenge to 1995 legislation. The opinion, largely affirming the trial court, can be found at: [www.supreme.state.az.us/opin/opinidx.htm](http://www.supreme.state.az.us/opin/opinidx.htm)

See special issue of the *Bulletin*.

supreme court officially accepted the special action involving Bolton, Pearson, and Pearce for hearing. The court indicated that the stay would continue until the outcome of the special action. The court rejected for the moment the tribes' motion for discovery saying that much of the requested information had been released under an earlier court order (see below).

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## Supreme Court Releases Documents, Seeks Others

The Arizona Supreme Court has ordered the release of documents filed under seal in the special action proceeding involving Judge Susan R. Bolton and Department of Water Resources officials (see lead article).

The documents released by the court include two letters from Rita Pearson, DWR director, to Judge Bolton (one including an early copy of 1995 legislation that altered the adjudication process), two letters from

Michael Pearce, DWR chief counsel, to Judge Bolton (one containing a list of "immediate issues" for the Gila River adjudication and the other enclosing a "proposed statement outlining the nature" of the hydrographic survey report for the Gila River Indian Community), a 46-page document called "Technical Principles of Water Rights Adjudications in Arizona" prepared by DWR, and a memo prepared

*continued on page 3...*

## Supreme Court Stays Gila River Adjudication

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It is unclear how the stay order affects the schedule for other motions that was announced at Judge Bolton's Sept. 11th hearing (see Gila River Proceedings, p. 4). On the one hand, the order indicates that "the court does not find it necessary or desirable to void any action taken at the September 11, 1998 hearing." On the other hand, the order indicates that "all action in the Gila River Adjudication is stayed. . . ." ♠

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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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## New LCR Judge Sought

The Arizona Supreme Court has announced that five superior court judges are being considered in an effort to designate a new presiding judge for the Little Colorado River adjudication. In an order filed on December 11th, the court identified the five judges and invited written comment on any or all of them by January 15th. The judges under consideration are:

**Judge Richard Anderson**, Yavapai County. Anderson was appointed to the bench in 1984 and now hears all types of criminal, civil, probate, and juvenile cases in the Verde Valley Judicial District. He received his bachelor's degree from Arizona State College at Flagstaff (1964) and his law degree from the University of Arizona (1968). Prior to becoming a judge, Anderson practiced law in the Verde Valley, Flagstaff, Prescott, Tucson, and Yuma.

**Judge Edward L. Dawson**, Gila County. Dawson has been a superior court judge since 1979 and presiding judge since 1986. He has heard "everything that gets filed in superior court" but has a special interest in complex trials. Dawson also served as county attorney for seven years. He received both his bachelor's and law degree from the University of Arizona (1967). Dawson has served on the Arizona Judicial Council and as president of the Arizona Judges Association.

**Judge Michael Irwin**, La Paz County. Irwin is the presiding superior court judge for La Paz County and has been on the bench since 1983. Before becoming a judge, he had a varied legal career as a private practitioner, a contract public defender, and deputy county attorney for Yuma County. Irwin received his bachelor's degree from

the University of Arizona (1970) and his law degree from Arizona State University (1973). He has served as chair of the State-Tribal-Federal Court Forum.

**Judge William T. Kiger**, Yavapai County. Kiger has been a superior court judge since 1994. He has heard all types of cases but 50% of his cases are criminal felony matters. Before assuming the bench, Kiger was in a general legal practice in the Prescott area and, before that, in Detroit. He has a strong interest in computers: "I believed that they were the only way a solo practitioner would be able to keep up . . . so I put one on my desk and taught myself how to use it." Kiger worked as a teacher in the Detroit area while attending law school at night.

**Judge Fred Newton**, Coconino County. Newton was appointed as a superior court judge in 1993 after serving as chief deputy county attorney for Coconino County. He has also worked in private practice, as a public defender, and in other prosecutorial positions. He successfully prosecuted the Don Bolles murder case and the Ricky Bible murder case. Newton graduated from Arizona State University (1972) and Gonzaga University Law School in 1976. He now serves as associate presiding judge for his court and on the board of the Arizona Judicial College.

More detailed biographic information for these judges is available from the office of the Special Master or on-line at:

"<http://www.supreme.state.az.us/wm/lcrdec.htm>" ♠

## Announcement: ABA 17th Annual Water Law Conference

The ABA's Section of Natural Resources, Energy, and Environmental Law announces the 17th Annual Water Law Conference on Feb. 25-26, 1999, in San Diego. This conference has become the nation's premier water law seminar for lawyers, administrators, government officials, and consultants. This year's theme will focus on evolving federal water law and policy issues.

One of the highlights of this year's conference will be the luncheon speaker, renowned author and lecturer Marc Reisner. His controversial book *Cadillac Desert* exposed the tactics employed by government officials and politicians in their quest to develop the water resource in the West. Mr. Reisner will speak on "The New Water Agenda: Privatization, Restoration and Deconstruction in the Arid West."

The conference will afford attendees the opportunity to interact directly with the conference's distinguished speakers. These speakers will cover a wide variety of emerging water law subjects through their cross-perspectives. Panels will be divided between the plenary sessions on Thursday and Friday mornings and break-out sessions on Thursday afternoon.

One of the featured panels on Thursday will include a case study of the federal government's role in water allocation through California's Central Valley Improvement Projects (CVPIA). Another of the Thursday panels will address

the conflicts between state laws and federal reclamation project laws and policies, and will include the perspectives of the U.S.

Department of Justice, a state attorney general (Nevada), and an irrigation district (represented by attorney Steven Hernandez of Las Cruces, New Mexico).

Thursday afternoon will include two sessions, each with two simultaneous break-out panels. The first two will address issues in developing municipal water supplies, and advice on

making Indian water settlements work. The latter two break-out sessions will address legal ethics in water rights practice, and technical tools in the water resources area, such as remote sensing and surveying.

On Friday, a distinguished panel will discuss the current litigation involving groundwater. The final topic will involve Total Maximum Daily Loads (TMDLs) and their impact on water rights and non-point source and point source discharges.

Among the moderators and panelists from Arizona are Larry Caster, Charlotte Benson, Rita Pearson, and John Thorson.

Further information may be obtained from the ABA at (312) 988-5724.

(Contributing to this article was Wayne Forman of Brownstein, Hyatt, Farber & Strickland in Denver, who is co-chair of the conference.) ♠



## Supreme Court Releases Documents, Seeks Others

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by Special Master John E. Thorson enclosing an agenda proposed by DWR for an "adjudication retreat" between DWR and the adjudication judges held in November 1996. These documents are available for inspection at the Arizona Supreme Court Clerk's office (1501 W. Washington, Phoenix; 602/542-9396). Copies may be obtained there at 50 cents per page.

The supreme court also ordered that Judge Bolton, Judge Allen Minker (Little Colorado River adjudication), Special Master Thorson, Pearson, and Pearce separately provide the court with any other documents that were distributed before, during, or after the November 1996 retreat. These documents are to be filed under seal within 30 days of the order. ♠

### George Read Carlock

1922 -1999

One of the deans of Arizona's water adjudications died in Phoenix on January 3rd. George Read Carlock, born in Globe, was a founding partner of what is now Ryley, Carlock & Applewhite. He was affiliated with the firm for 50 years. Although prominent in Arizona water law, Carlock is better known in the legal community as an outstanding litigator and transactional law advisor. We remember him for his love of rural Arizona, his calm and courteous nature, his finely honed legal abilities, and the dignity he brought to the legal profession.

# Gila River Proceedings

## Gila River Indian Community

Upcoming proceedings concerning the Gila River Indian Community (GRIC) have been most directly affected by the stay issued by the Arizona Supreme Court on December 15 (*see* lead article, p. 1). Judge Bolton cancelled her hearing on December 21st that originally had been set to discuss a schedule for upcoming motions. The Arizona Department of Water Resources had planned to file the hydrographic survey report (HSR) for the GRIC Reservation by the end of 1998. Though the report is completed, DWR decided that the stay prevents the release of the HSR.

Before the stay was entered, the Salt River Project, City of Tempe, United States, and Gila River Indian Community proposed a schedule for the consideration of additional threshold issues concerning the GRIC claims (*see* Aug.-Oct. 1998 *Bulletin* at 4-5). Judge Bolton earlier had adopted a schedule for filing motions on the possible preclusive effect of the federal Globe Equity Decree and expert reports concerning the purposes of the GRIC reservation. The Salt River Project and joining parties urged the court to schedule summary judgment motions on the possible preclusive effect of other legal proceedings and contracts such as proceedings before the Indian Claims Commission, the *Haggard* and *Benson-Allison* decrees, agreements between SRP and GRIC, and agreements between the United States and several irrigation and water distribution entities. The Salt

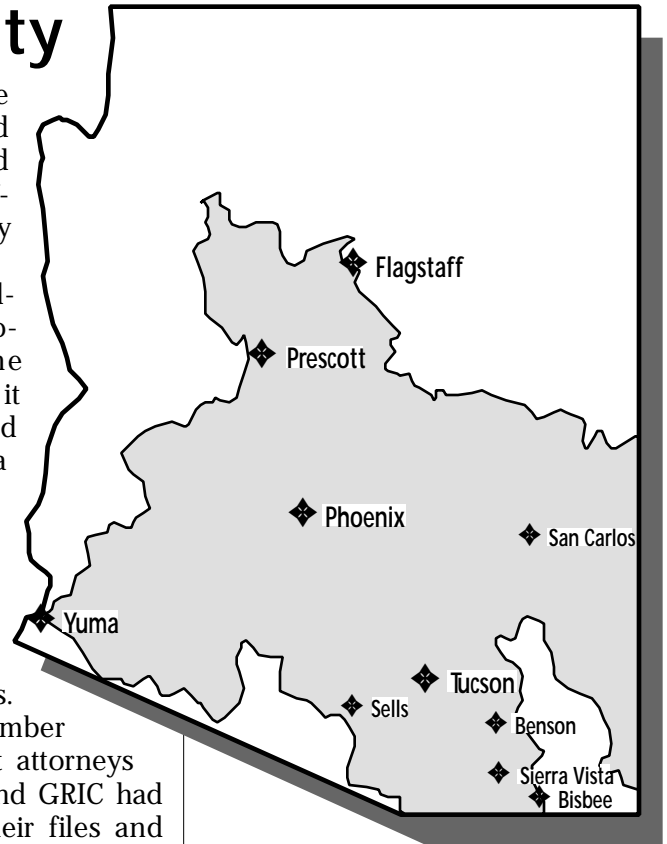
River Project and the other parties proposed a schedule that would have concluded briefing on these issues by October 1, 1999.

In a separate pleading, the Salt River Project has notified the adjudication court that it believes the United States and the Gila River Indian Community have failed to disclose all the documents in their possession pertaining to proceedings before the U.S. Court of Claims. The report, filed December 8th, does indicate that attorneys for the United States and GRIC had promised to review their files and submit any documents necessary to comply with the court's discovery order.

### ***Trimble v. Chattman***

A neighborhood dispute over a shared spring has resulted in an interim ruling that such small sources of water will not be considered in the general stream adjudication (*see* Aug.-Oct. 1998 *Bulletin*, p. 5). The Trimbles and Chattmans have used water from Cottonwood Springs, located on the Chattmans' property north of Cave Creek, and both parties claimed the water source in the Gila River adjudication.

Continuing disagreements over the water led the Trimbles' attorney to seek injunctive relief from superi-



or court. Special Master John E. Thorson, to whom the case was assigned, held evidentiary hearings and, on October 29th, ruled in favor of the Chattmans. Specifically, the Master held that the spring produced water that cannot be appropriated under Arizona law. Nonappropriable water belongs to the landowner upon whose property the water arises, and such water is not subject to adjudication. The Master recommended that both parties' claims in the adjudication be dismissed for the reason the adjudication court lacks jurisdiction over Cottonwood Springs.

*continued on page 5*

# CALENDAR

## Feb. 25-26, 1999

ABA 17th Annual  
Water Law Conference  
San Diego

## ☛ 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*)

## ☛ 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*)

## Apr. 1, 1999 - 9:30 a.m.

Case No. 6417 (LCR)  
Status Conference  
Apache County Courthouse,  
St. Johns  
(see *minute entry Nov. 20, 1998*)

## ☛ Apr. 30, 1999

Case No. W1-203 (GR)  
Due date: Responses to motions  
for summary judgment re preclu-  
sive 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*)

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

☛ *The effect of the stay order (Dec. 15, 1998) on these due dates is uncertain. See the lead article, last paragraph.*

## Trimble V. Chattman

... continued from page 4

The Master set forth two require-  
ments for determining whether a  
spring is appropriable:

- Does the spring, in its natural condition, have surface prominence beyond just a dampness or ooze through the soil (*e.g.*, a bed, bank, or channel)?

- Does the spring, in its natural condition, provide usable quantities of water on the surface?

The Master's determination is now before Judge Susan R. Bolton for final consideration. Judge Bolton, however, has indicated that she is unable to rule on the report until the stay of the Gila River adjudication is lifted (see lead article, p. 1).

The Special Master's report is available in printed form at no charge. It is also available in an innovative computer compact disk (CD) format for \$15. The CD contains the Master's report, copies of all exhibits and pleadings in Contested Case W1-102, and copies of selected pleadings and documents from an earlier related case. Call Kathy Dolge at (602) 542-9600 to order the printed version or the CD (or both). ♠



## 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>

## Adjudications, HSRs, WFRs, Discovery

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Adjudications Division  
AZ Dept. of Water  
Resources  
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Phoenix, AZ 85004  
(602) 417-2442  
(Toll free in AZ)  
1-800-352-8488

## Scheduling, Procedure

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Arizona State Courts  
Building  
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Phoenix, AZ 85007  
(602) 542-9600  
FAX (602) 542-9602  
TDD (602) 542-9545

## Pleadings

### Gila River

Oscar Garcia  
Clerk's Office  
Maricopa County  
Superior Court  
Records Mgt. 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  
Apache County  
Courthouse  
P.O. Box 365  
St. Johns, AZ 85936  
(520) 337-4364  
FAX (520) 337-2771

# Little Colorado River Proceedings

## Minker Holds Last Hearing

On November 20th, Judge Allen Minker held his last hearing as presiding judge for the Little Colorado River adjudication. Minker announced last fall that he would not stand for reelection in Greenlee County. Since stepping down as a superior court judge on December 31st, Minker and his wife Susan have moved to the San Luis Obispo area of northern California.

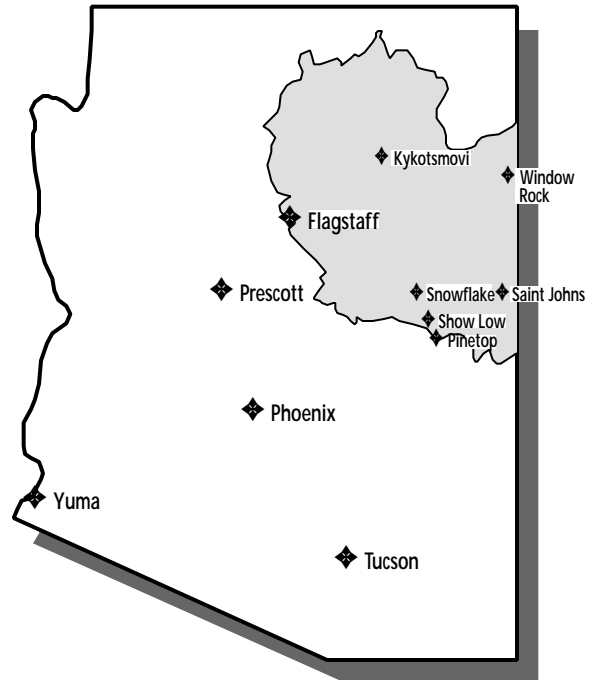
The November 20th hearing was an especially positive one for Judge Minker and the attorneys and parties in attendance. While many of the negotiating parties were pessimistic going into last-minute discussions with Settlement Judge Michael Nelson, a potential impasse was averted at the last moment by the Department of Interior's effort to address two issues that Judge Minker had ordered the parties to resolve as a precondition for continuing the stay of litigation. Those issues are (1) how much water will be available for conveyance by the pipeline running from Lake Powell to the Indian reservation and (2) whether the tribes will be able to market any of the water awarded under the settlement to users off the reservation.

In a letter dated November 19th, David J. Hayes, Counselor to the Secretary of Interior, offered an additional 4,000 acre-feet/year (ac-ft/yr) of Central Arizona Project (CAP) water (municipal and industrial priority) to be shared equally by the Hopi Tribe and Navajo Nation. The water, however, would not be conveyed by the pipeline

(already scheduled to carry 8,000 ac-ft/yr under the proposed settlement). Indeed, the United States would not be responsible for the cost of delivery or the facilities necessary to deliver this additional 4,000 ac-ft/yr of water.

Hayes also suggested that other CAP water might be found and allocated to the Navajo Nation if such action would overcome the opposition some parties have to off-reservation marketing of Indian water rights.

While most parties characterized the Interior Department's letter as encouraging, they indicated they would need more time to review the proposal. The Department of Water Resources (DWR) voiced its concern that the 4,000 ac-ft/yr allocation, if actually diverted above Lee Ferry on the Colorado River, might be opposed by other Colorado River states or by central Arizona water users who use most of the Colorado River



water allocated to the state.

Attorneys reported progress in other areas including the procedure for grandfathering existing water rights as part of the settlement, design of the Three Canyon Project, the claims of the Zuni Pueblo, and separate agreements between the National Park Service (NPS) and major users. The Department of Water Resources indicated, however, that it would likely oppose any NPS instream flow rights if they were based on the federal reserved rights doctrine. Judge Minker ordered the NPS and DWR to meet on this problem and submit a joint report to the court by March 26, 1999.

The parties had widely varying estimates of when a settlement bill might be presented to Congress.

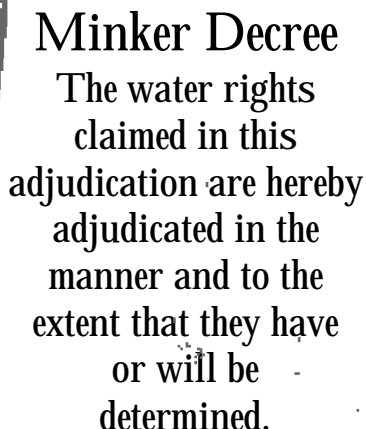
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## Minker Holds Last Hearing

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Several attorneys suggested that a bill might be ready by January or February 1999. Others indicated that April 1999, September 1999, or even January 2000 might be more realistic. John Weldon for the Salt River Project offered his opinion that the settlement package is so expensive that every important aspect will have to be settled before the Arizona congressional delegation will agree to support the legislation.

At the conclusion of the hearing, Judge Minker ordered that written status reports on the settlement process be submitted to the court on February 15 and March 26, 1999. The next hearing will be held in



**Minker Decree**  
The water rights  
claimed in this  
adjudication are hereby  
adjudicated in the  
manner and to the  
extent that they have  
or will be  
determined.

St. Johns on Thursday, April 1, 1999, unless the new judge assigned to the case changes the date.

The hearing was followed by a group photograph and a luncheon in honor of Judge Minker. Many people recalled Minker's fairness and leadership in the adjudication and thanked him for his service. Minker was given several mementos of his service including a humorous "Minker Decree for the Little Colorado River Adjudication" (see box). Judge Nelson remarked that the lunch was also one of celebration--commemorating the progress made in settling the case and committing the necessary effort to complete the work. ♠

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